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## HOUSE BILL NO. 2605

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 54.1-3401 and 54.1-3408 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 27.01, consisting of sections numbered 54.1-2729.1, 54.1-2729.2, and 54.1-2729.3, relating to certification of dialysis patient care technicians.

Patron—Bryant

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 54.1-3401 and 54.1-3408 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 27.01, consisting of sections numbered 54.1-2729.1, 54.1-2729.2, and 54.1-2729.3, as follows:

CHAPTER 27.01.

DIALYSIS PATIENT CARE TECHNICIANS.

§ 54.1-2729.1. Scope of chapter.

This chapter shall not preclude or affect the ability of unregulated persons to perform services relating to the technical elements of dialysis, such as equipment maintenance and preparation of dialyzers for reuse by the same patient.

§ 54.1-2729.2. Dialysis patient care technician; definition.

"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the Board of Health Professions to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician.

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty.

A. No person shall hold himself out to be or advertise or permit to be advertised that he is a dialysis patient care technician or dialysis care technician as defined in this chapter unless such person has obtained certification from an organization approved by the Board of Health Professions as examining candidates for appropriate competency or technical proficiency to perform as dialysis patient care technicians or dialysis care technicians.

B. The title restrictions provided by this section shall apply to the use of the terms "dialysis patient care technician" and "dialysis care technician" or any other term or combination of terms used alone or in combination with the terms "licensed," "certified," or "registered," as such terms also imply a minimum level of education, training, and competence.

C. The Board of Health Professions may require such continuing competency training as it may deem necessary for dialysis patient care technicians or dialysis care technicians.

D. The Board of Health Professions may establish fees for administering the approval of the certification of dialysis patient care technicians or dialysis care technicians.

E. Any person who willfully violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

§ 54.1-3401. Definitions.

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

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

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HB2605

59 "Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related  
60 to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.

61 "Animal" means any nonhuman animate being endowed with the power of voluntary action.

62 "Automated drug dispensing system" means a mechanical or electronic system that performs  
63 operations or activities, other than compounding or administration, relating to pharmacy services,  
64 including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of  
65 all transaction information, to provide security and accountability for such drugs.

66 "Board" means the Board of Pharmacy.

67 "Change of ownership" of an existing entity permitted, registered or licensed by the Board means (i)  
68 the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns  
69 or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a  
70 partnership, or change in partnership composition; (iii) the acquisition or disposal of fifty percent or  
71 more of the outstanding shares of voting stock of a corporation owning the entity or of the parent  
72 corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any  
73 corporation the voting stock of which is actively traded on any securities exchange or in any  
74 over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation  
75 of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the  
76 expiration or forfeiture of a corporation's charter.

77 "Compound" means the taking of two or more ingredients and fabricating them into a single  
78 preparation, usually referred to as a dosage form.

79 "Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of  
80 this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms  
81 are defined or used in Title 3.1 or Title 4.1.

82 "DEA" means the Drug Enforcement Administration, United States Department of Justice, or its  
83 successor agency.

84 "Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by  
85 this chapter, whether or not there exists an agency relationship.

86 "Device" means instruments, apparatus, and contrivances, including their components, parts and  
87 accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in  
88 man or animals or to affect the structure or any function of the body of man or animals.

89 "Dialysis care technician" or *"dialysis patient care technician"* means an ~~unlicensed~~ individual who is  
90 *certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01*  
91 *(54.1-2729.1 et seq.) of this title and who*, under the supervision of a licensed practitioner of medicine  
92 or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a  
93 Medicare-certified renal dialysis facility.

94 "Dialysis solution" means either the commercially available, unopened, sterile solutions whose  
95 purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal  
96 dialysis, or commercially available solutions whose purpose is to be used in the performance of  
97 hemodialysis not to include any solutions administered to the patient intravenously.

98 "Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the  
99 lawful order of a practitioner, including the prescribing and administering, packaging, labeling or  
100 compounding necessary to prepare the substance for that delivery.

101 "Dispenser" means a practitioner who dispenses.

102 "Distribute" means to deliver other than by administering or dispensing a controlled substance.

103 "Distributor" means a person who distributes.

104 "Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia  
105 National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to  
106 any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment or  
107 prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect  
108 the structure or any function of the body of man or animals; or (iv) articles or substances intended for  
109 use as a component of any article specified in clause (i), (ii) or (iii). "Drug" does not include devices or  
110 their components, parts or accessories.

111 "Electronic transmission prescription" means any prescription, other than an oral or written  
112 prescription or a prescription transmitted by facsimile machine, that is electronically transmitted directly  
113 to a pharmacy without interception or intervention from a third party from a practitioner authorized to  
114 prescribe or from one pharmacy to another pharmacy.

115 "Facsimile (FAX) prescription" means a written prescription or order, which is transmitted by an  
116 electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy  
117 form.

118 "Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any  
119 such extract with a tetrahydrocannabinol content of less than twelve percent by weight.

120 "Immediate precursor" means a substance which the Board of Pharmacy has found to be and by

regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include the preparing, compounding, packaging or labeling of a controlled substance by a practitioner as an incident to his administering or dispensing of a controlled substance or marijuana in the course of his professional practice, or by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Manufacturer" means every person who manufactures.

"Marijuana" means any part of a plant of the genus *Cannabis* whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than twelve percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seeds of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus *Cannabis*.

"Medical equipment supplier" means any person, as defined in § 1-13.19, engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment and solutions for peritoneal dialysis.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means: (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the United States Drug Enforcement Administration, under any laws of the United States making provision therefor,

182 if such order forms are authorized and required by federal law, and if no such order form is provided  
183 then on an official form provided for that purpose by the Board of Pharmacy.

184 "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to  
185 morphine or being capable of conversion into a drug having such addiction-forming or  
186 addiction-sustaining liability. It does not include, unless specifically designated as controlled under  
187 Article 4 (§ 54.1-3437 et seq.) of this chapter, the dextrorotatory isomer of  
188 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and  
189 levorotatory forms.

190 "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

191 "Original package" means the unbroken container or wrapping in which any drug or medicine is  
192 enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor  
193 for use in the delivery or display of such article.

194 "Person" means both the plural and singular, as the case demands, and includes an individual,  
195 partnership, corporation, association, governmental agency, trust, or other institution or entity.

196 "Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application  
197 for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in  
198 a manner complying with the laws and regulations for the practice of pharmacy and the sale and  
199 dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy  
200 and the pharmacy's personnel as required by § 54.1-3432.

201 "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

202 "Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01,  
203 licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified  
204 optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title, veterinarian, scientific  
205 investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe  
206 and administer, or conduct research with respect to, a controlled substance in the course of professional  
207 practice or research in this Commonwealth.

208 "Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue  
209 a prescription.

210 "Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word  
211 of mouth, telephone, telegraph or other means of communication to a pharmacist by a duly licensed  
212 physician, dentist, veterinarian or other practitioner, authorized by law to prescribe and administer such  
213 drugs or medical supplies.

214 "Prescription drug" means any drug required by federal law or regulation to be dispensed only  
215 pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503 (b) of  
216 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353 (b)).

217 "Production" or "produce" includes the manufacture, planting, cultivation, growing or harvesting of a  
218 controlled substance or marijuana.

219 "Proprietary medicine" means a completely compounded nonprescription drug in its unbroken,  
220 original package which does not contain any controlled substance or marijuana as defined in this chapter  
221 and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general  
222 public by or under the authority of the manufacturer or primary distributor, under a trademark, trade  
223 name or other trade symbol privately owned, and the labeling of which conforms to the requirements of  
224 this chapter and applicable federal law. However, this definition shall not include a drug which is only  
225 advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic,  
226 a drug which may be dispensed only upon prescription or the label of which bears substantially the  
227 statement "Warning - may be habit-forming," or a drug intended for injection.

228 "Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei  
229 with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or  
230 radionuclide generator that is intended to be used in the preparation of any such substance, but does not  
231 include drugs such as carbon-containing compounds or potassium-containing salts that include trace  
232 quantities of naturally occurring radionuclides. The term also includes any biological product that is  
233 labeled with a radionuclide or intended solely to be labeled with a radionuclide.

234 "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any  
235 person, whether as an individual, proprietor, agent, servant or employee.

236 "Warehouser" means any person, other than a wholesale distributor, engaged in the business of  
237 selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user  
238 or consumer. No person shall be subject to any state or local tax by reason of this definition.

239 "Wholesale distribution" means distribution of prescription drugs to persons other than consumers or  
240 patients, subject to the exceptions set forth in § 54.1-3401.1.

241 "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs  
242 including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors;  
243 jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug

warehouses conducting wholesale distributions, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies conducting wholesale distributions. No person shall be subject to any state or local tax as a wholesale merchant by reason of this definition.

The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) of this title and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus or glasses or lenses for the eyes.

The terms "pharmacist," "pharmacy" and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 of this title unless the context requires a different meaning.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a certified respiratory therapy practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

E. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

F. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

G. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

H. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the

305 placement of children in need of services or delinquent or alleged delinquent youth; (v) a program  
306 participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident  
307 of any facility authorized or operated by a state or local government whose primary purpose is not to  
308 provide health care services.

309 I. In addition, this section shall not prevent the administration of drugs by a person who administers  
310 such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of  
311 administration and with written authorization of a parent, and in accordance with school board  
312 regulations relating to training, security and record keeping, when the drugs administered would be  
313 normally self-administered by a student of a Virginia public school. Training for such persons shall be  
314 accomplished through a program approved by the local school boards, in consultation with the local  
315 departments of health.

316 J. Nothing in this title shall prohibit the administration of normally self-administered oral or topical  
317 drugs by unlicensed individuals to a person in his private residence.

318 K. This section shall not interfere with any prescriber issuing prescriptions in compliance with his  
319 authority and scope of practice and the provisions of this section to a Board agent for use pursuant to  
320 subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid  
321 prescriptions.

322 L. Nothing in this title shall prevent *or interfere with* dialysis care technicians *or dialysis patient care*  
323 *technicians who are certified by an organization approved by the Board of Health Professions pursuant*  
324 *to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title*, in the ordinary course of their duties in a  
325 Medicare-certified renal dialysis facility, from administering *medications, such as* heparin, topical needle  
326 site anesthetics, dialysis solutions ~~and~~, sterile normal saline solution, *and blood volumizers*, for the  
327 purpose of facilitating renal dialysis treatment, ~~provided~~ *when* such administration of medications occurs  
328 under the orders of a licensed physician and under the immediate and direct supervision of a licensed  
329 registered nurse.

330 The dialysis care technician *or dialysis patient care technician* administering the medications ~~must~~  
331 ~~have been trained in renal dialysis practices and procedures by a licensed nurse, and must shall~~ have  
332 demonstrated competency as evidenced by satisfactory completion of a training program in accordance  
333 with the Core Curriculum for the Dialysis Technician, also known as the Amgen Core Curriculum, or a  
334 comparable education and training curriculum *holding current valid certification from an organization*  
335 *approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this*  
336 *title*.

337 2. That notwithstanding the provisions of this act, any person employed as a dialysis care  
338 technician on or before June 30, 2003, and administering medications in the ordinary course of his  
339 duties in a Medicare-certified renal dialysis facility who has satisfactorily completed a training  
340 program in accordance with the Core Curriculum for Dialysis Technician, also known as the  
341 Amgen Core Curriculum, or a comparable education and training curriculum as provided in  
342 § 54.1-3408 as in effect on January 1, 2003, shall be authorized to continue such employment and  
343 administration of medications and shall be deemed to be certified as a dialysis care technician or  
344 dialysis patient care technician pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of Title 54.1.