

083209836

HOUSE BILL NO. 1331

House Amendments in [ ] — February 4, 2008

A BILL to amend and reenact §§ 2.2-203.3 and 15.2-902 of the Code of Virginia; to amend the Code of Virginia by adding a title numbered 3.2, containing Subtitle I, consisting of chapters numbered 1 through 10, containing sections numbered 3.2-100 through 3.2-1011, Subtitle II, consisting of chapters numbered 11 through 31, containing sections numbered 3.2-1100 through 3.2-3111, Subtitle III, consisting of chapters numbered 32 through 50, containing sections numbered 3.2-3200 through 3.2-5000, Subtitle IV, consisting of chapters numbered 51 through 58, containing sections numbered 3.2-5100 through 3.2-5820, and Subtitle V, consisting of chapters numbered 59 through 65, containing sections numbered 3.2-5900 through 3.2-6590, and by adding in Chapter 2 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-217.1 through 10.1-217.6; and to repeal Title 3.1 (§§ 3.1-1 through 3.1-1114.1) [ and Article 3.1 (§§ 10.1-559.1 through 10.1-559.11) of Chapter 5 of Title 10.1 ] of the Code of Virginia, relating to revising and recodifying the laws pertaining to Agriculture, Animal Care, and Food.

Patron Prior to Engrossment—Delegate Landes

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-203.3 and 15.2-902 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a title numbered 3.2, containing Subtitle I, consisting of chapters numbered 1 through 10, containing sections numbered 3.2-100 through 3.2-1011, Subtitle II, consisting of chapters numbered 11 through 31, containing sections numbered 3.2-1100 through 3.2-3111, Subtitle III, consisting of chapters numbered 32 through 50, containing sections numbered 3.2-3200 through 3.2-5000, Subtitle IV, consisting of chapters numbered 51 through 58, containing sections numbered 3.2-5100 through 3.2-5820, and Subtitle V, consisting of chapters numbered 59 through 65, containing sections numbered 3.2-5900 through 3.2-6590, and by adding in Chapter 2 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-217.1 through 10.1-217.6, as follows:

§ 2.2-203.3. Position established; agencies for which responsible; additional duties.

The position of Secretary of Agriculture and Forestry (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Agriculture and Consumer Services, and Virginia Agricultural Council, and Virginia Marine Products Board. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

TITLE 3.2.

AGRICULTURE, ANIMAL CARE, AND FOOD.

SUBTITLE I.

GENERAL PROVISIONS; PROTECTION AND PROMOTION OF AGRICULTURE.

CHAPTER 1.

GENERAL PROVISIONS.

Article 1.

Department and Commissioner of Agriculture and Consumer Services.

§ 3.2-100. Definitions.

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

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Department of Agriculture and Consumer Services.

§ 3.2-101. Department continued; appointment of Commissioner; agriculture education.

A. The Department of Agriculture and Consumer Services is continued. The Department shall be under the management and control of a Commissioner appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor. Any vacancy in the office of the Commissioner shall be filled by appointment by the Governor pursuant to the provisions of Article V, Section 10 of the Constitution of Virginia.

B. There shall be established, within the Department, to be administered by the Department of Agriculture Education at Virginia Polytechnic Institute and State University, a unit of specialists in agriculture education. The unit shall: (i) assist in developing and revising local agriculture curricula to

ENGROSSED

HB1331E

59 integrate the Standards of Learning; (ii) provide professional development for agriculture instructional  
60 personnel to improve the quality of agriculture education; (iii) conduct site visits to the schools  
61 providing agriculture education; and (iv) seek the input of business and industry representatives  
62 regarding the content and direction of agriculture education programs in the public schools of the  
63 Commonwealth.

64 1. Any required reduction in the Department's budget shall be reflected in a proportional reduction  
65 in the operation of the agriculture education unit. The reduction in the allocation for operation of the  
66 agriculture education unit shall not exceed the percentage reduction provided for in the appropriation  
67 act for the Department.

68 2. In the event that additional funds are not allocated for these positions, the Department shall not  
69 be required to absorb the costs of these positions.

70 § 3.2-102. General powers and duties of the Commissioner.

71 A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and  
72 duties herein provided, and such other powers and duties as may be prescribed by law, including those  
73 prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are  
74 carried out. He shall see to the proper execution of laws relating to the Department. Unless the  
75 Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and  
76 develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement,  
77 and maintain programs within the Department including those that promote the development and  
78 marketing of the Commonwealth's agricultural products in domestic and international markets, including  
79 promotions, market development and research, marketing assistance, market information, and product  
80 grading and certification; promote the creation of new agribusiness including new crops, biotechnology  
81 and new uses of agricultural products, and the expansion of existing agribusiness within the  
82 Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety  
83 and quality of the Commonwealth's food supply through food and dairy inspection activities, industry  
84 and consumer education, and information on food safety; preserve the Commonwealth's agricultural  
85 lands; ensure animal health and protect the Commonwealth's livestock industries through disease control  
86 and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane  
87 treatment and care of animals; protect public health and the environment through regulation and proper  
88 handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species;  
89 protect crop and plant health and productivity; ensure consumer protection and fair trade practices in  
90 commerce; develop plans and emergency response protocols to protect the agriculture industry from  
91 bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in  
92 the Commonwealth's response to natural disasters; develop and implement programs and inspection  
93 activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and  
94 internationally; and enter into agreements with federal, state, and local governments, land grant  
95 universities, and other organizations that include marketing, plant protection, pest control, pesticides,  
96 and meat and poultry inspection.

97 B. In addition, the Commissioner shall:

98 1. Have the authority, in the same manner as provided in § 59.1-308.2, to inquire into consumer  
99 complaints regarding violations of § 46.2-1231 or 46.2-1233.1 involving businesses engaged in towing  
100 vehicles or to refer the complaint directly to the appropriate local enforcement officials;

101 2. Establish mechanisms by which to receive complaints and related inquiries from the  
102 Commonwealth's consumers involving violations or alleged violations of any law designed to protect the  
103 integrity of consumer transactions in the Commonwealth. Such mechanisms shall include establishing a  
104 statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of  
105 such hotline through public service announcements on television and radio and in newspapers and other  
106 media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the  
107 Department through computer networks such as the Internet;

108 3. Establish and administer programs that facilitate resolution of complaints and related inquiries  
109 from the Commonwealth's consumers involving violations or alleged violations of any law designed to  
110 protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed  
111 in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law  
112 schools or other institutions of higher education, community dispute resolution centers, or any other  
113 private or public entity, including any local offices of consumer affairs established pursuant to  
114 § 15.2-963 that volunteer to participate in a program. He shall submit an annual written report on or  
115 before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural  
116 Resources and the Senate Committee on Agriculture, Conservation, and Natural Resources on his  
117 activities pursuant to this subdivision and subdivision 2 of this subsection during the preceding calendar  
118 year;

119 4. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate  
120 and promote the purchase of Virginia farm products by schools, universities, and other educational

121 institutions under the jurisdiction of the State Department of Education. The website shall present such  
122 current information as the availability of Virginia farm products, including the types and amount of  
123 products, and the names of and contact information for farmers, farm organizations, and businesses  
124 marketing such products; and

125 5. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of  
126 Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote,  
127 develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100.  
128 Such corporation shall provide wholesale wine distribution services for wineries and farm wineries  
129 licensed in accordance with § 4.1-207. The board of directors of such corporation shall be composed of  
130 the Commissioner and four members appointed by the Board, including one owner or manager of a  
131 winery or farm winery licensee that is not served by a wholesaler when the owner or manger is  
132 appointed to the board; one owner or manager of a winery or farm winery licensee that produces no  
133 more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making  
134 appointments to the board of directors, the Board shall consider nominations of winery and farm winery  
135 licensees submitted by the Virginia Wineries Association and wine wholesaler licensees submitted by the  
136 Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to  
137 him at least annually on its activities, including reporting the quantity of wine distributed for each  
138 winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement  
139 Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers  
140 granted under this section.

141 § 3.2-103. Records to be held in confidence.

142 The Commissioner shall hold the following records of the Department in confidence unless otherwise  
143 directed by the Governor or the Board:

- 144 1. Schedules of work for regulatory inspection;
- 145 2. Trade secrets and commercial or financial information supplied by individuals or business entities  
146 to the Department;
- 147 3. Reports of criminal violations made to the Department by persons outside the Department;
- 148 4. Records of active investigations until the investigations are closed;
- 149 5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account  
150 except those records that are otherwise a matter of public record; and
- 151 6. Tax returns required by the agricultural commodity boards established pursuant to this title to the  
152 extent necessary to protect the privacy of individual taxpayers.

153 § 3.2-104. Commissioner may serve on board of national tobacco trust entity.

154 The Commissioner may serve in his official capacity on the board of directors of any entity  
155 established to ensure the implementation in the Commonwealth of a national tobacco trust established to  
156 provide payments to tobacco growers and tobacco quota owners to ameliorate adverse economic  
157 consequences resulting from a national settlement of states' claims against tobacco manufacturers.

158 § 3.2-105. Century Farm Program.

159 The Commissioner shall establish a century farm program to honor farm families in the  
160 Commonwealth whose property has been in the same family for 100 years or more. In order to be  
161 eligible for recognition under the program, a farm shall: (i) have been owned by the same family for at  
162 least 100 consecutive years; (ii) be lived on, or actually farmed by, a descendent of the original owners;  
163 and (iii) gross more than \$2,500 annually from the sale of farm products. At the discretion of the  
164 Commissioner, a farm that does not gross more than \$2,500 annually but is being used for a bona fide  
165 silvicultural purpose may be recognized under the program.

166 § 3.2-106. Horse breeder incentive program.

167 A. It is the policy of the Commonwealth to encourage the growth of all segments of its agricultural  
168 industry. The General Assembly finds that the horse breeding industry has a significant impact on the  
169 Commonwealth's economy and that it is to the Commonwealth's benefit to encourage, expand, and  
170 develop horse breeding farms with programs providing financial incentives to breeders that will  
171 encourage and supplement private capital.

172 B. To the extent that public or private funds become available, the Department may establish a  
173 program of financial incentives designed to encourage, expand, and develop the breeding of horses in  
174 the Commonwealth. The Department shall adopt appropriate regulations for the administration of the  
175 program. Such regulations shall provide for the distribution of financial awards to breeders only to the  
176 extent that public funds made available to the Department for the program are matched dollar for  
177 dollar by private funds. The regulations shall also provide that no single breeder shall receive, in any  
178 one calendar year, more than 10 percent of the public funds made available to the Department for the  
179 program during that year. Awards made under any such incentive program shall be limited to horses  
180 foaled in the Commonwealth that are owned by breeders who are actively engaged in the breeding of  
181 horses in the Commonwealth.

182 § 3.2-107. *Testing samples of products delivered to laboratories; prescribing and collecting fees;*  
 183 *Laboratory Fee Fund established; disposition of moneys.*

184 A. *The Commissioner may have tested samples of manufactured, processed, or natural products*  
 185 *delivered to laboratories operated by the Division of Consolidated Laboratory Services or the*  
 186 *Department and prescribe and collect reasonable fees for the services rendered.*

187 B. *All fees and moneys collected or received by the Commissioner or the Department in its official*  
 188 *capacity for the testing of samples of manufactured, processed, or natural products shall be paid into*  
 189 *the Laboratory Fee Fund.*

190 C. *There is hereby created in the state treasury a special nonreverting fund to be known as the*  
 191 *Laboratory Fee Fund, hereinafter referred to as the Fund. The Fund shall be established on the books*  
 192 *of the Comptroller. All fees collected pursuant to this section shall be paid into the state treasury and*  
 193 *credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited*  
 194 *to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall*  
 195 *not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for*  
 196 *the purposes of the costs of the testing provided for in this section. Expenditures and disbursements from*  
 197 *the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written*  
 198 *request signed by the Commissioner.*

199 § 3.2-108. *Department to establish a program to support new and emerging crops and technologies.*

200 A. *From such funds as may be appropriated for such purposes and from gifts, donations, grants,*  
 201 *bequests, and other funds as may be received, the Department shall establish a program to:*

202 1. *Encourage the production of alternative crops in the Commonwealth that may be used as a*  
 203 *feedstock for energy generation and transportation, thereby supporting farmers and farm communities in*  
 204 *their efforts to: (i) sustain and enhance economically viable business opportunities in agriculture; (ii)*  
 205 *reduce nonpoint source pollution in the Chesapeake Bay and other waters of the Commonwealth; (iii)*  
 206 *restore depleted soils; (iv) provide wildlife habitat; (v) reduce greenhouse gases; and (vi) reduce the*  
 207 *country's dependence on foreign supplies of energy;*

208 2. *Assist the development of bioenergy feedstock crop technologies, including but not limited to, seed*  
 209 *stock supplies, production technology, harvest equipment, transportation infrastructure and storage*  
 210 *facilities;*

211 3. *Identify and assist in the development of commercially viable bioenergy market opportunities,*  
 212 *including recruitment, expansion and establishment of renewable bioenergy businesses in Virginia; and*

213 4. *Promote the aquaculture of the species that are natives to or reside within the waters of the*  
 214 *Chesapeake Bay and the Virginia Coast, in concert with the efforts of Virginia higher education*  
 215 *institutions and the Virginia Marine Resources Commission, with a focus on assisting "traditional*  
 216 *watermen" who rely on harvesting marine fish and shellfish. This effort shall also include watermen who*  
 217 *are viable working participants of the aquaculture industry as contract growers, cooperatives or other*  
 218 *business entities.*

219 B. *The Department shall provide funds in the form of grants to accomplish the objectives described*  
 220 *in subsection A. The Department shall develop guidelines for the operation of the program that shall*  
 221 *include, at a minimum, eligibility criteria for receiving grant awards, financial accountability for*  
 222 *receiving grant awards, allowable uses of grant funds, and agricultural programmatic priorities. The*  
 223 *Department shall consult with the Department of Conservation and Recreation and the U.S. Department*  
 224 *of Agriculture's Natural Resources Conservation Service, when appropriate, to ensure compatibility with*  
 225 *existing cost-share and other agricultural incentive programs.*

226 *Article 2.*

227 *Board of Agriculture and Consumer Services.*

228 § 3.2-109. *Board of Agriculture and Consumer Services; appointments; qualifications; and terms of*  
 229 *office.*

230 *The Board is established as a policy board, within the meaning of § 2.2-2100, in the executive*  
 231 *branch of state government and may adopt regulations in accordance with the provisions of this title.*  
 232 *The Board shall consist of one member from each congressional district, at least seven of whom shall*  
 233 *be currently practicing farmers, appointed by the Governor for a term of four years, and confirmed by*  
 234 *the General Assembly. The presidents of the Virginia Polytechnic Institute and State University and*  
 235 *Virginia State University shall be ex officio members of the Board. No member of the Board, except the*  
 236 *ex officio members, shall be eligible for more than two successive terms; provided that persons*  
 237 *appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies*  
 238 *they were appointed to fill have expired. All vacancies in the membership of the Board shall be filled by*  
 239 *the Governor for the unexpired term.*

240 § 3.2-110. *Officers of the Board; meetings.*

241 A. *The Board shall annually elect a president, vice president, and secretary.*

242 B. *The Board shall meet at least three times a year for the transaction of business. Special meetings*  
 243 *may be held at any time upon the call of the president of the Board, the request of the Commissioner,*

244 or the written request of a majority of the Board members.

245 § 3.2-111. General powers and duties of the Board.

246 A. The Board shall be charged with all matters tending to the promotion of the agricultural interests  
247 of the Commonwealth. It shall have power to receive, hold in trust, and administer any donation made  
248 to it for the advancement of the agricultural interests of the Commonwealth.

249 B. The Board shall have power to purchase or lease land, not to exceed 1,000 acres, for the  
250 programs of the Department, and shall regulate and prescribe the salaries of such officers and  
251 employees of the Department who shall be employed in such programs.

252 C. The Board shall also be required to advise the Governor on the state of the agricultural industry  
253 and to advise him on promoting the development of the industry; encouraging persons, agencies,  
254 organizations, and industries to develop the industry; working closely with all agencies concerned with  
255 rural resources development; coordinating efforts toward maximum farm and off-farm employment;  
256 examining marketing procedures and new techniques for selling the Commonwealth's farm products;  
257 formulating plans for developing new markets for such products; and such other matters as the  
258 Governor may request.

259 D. The Board shall not adopt any regulation that prohibits or restricts a person, his immediate  
260 family, or his guests from consuming products or commodities grown or processed on his property  
261 provided that the products or commodities are not offered for sale to the public.

262 E. The Board shall oversee the development of a farmers market system.

263 § 3.2-112. Regulations governing the conduct of referenda.

264 The Board shall adopt regulations governing the ballots to be used in any referendum, the conduct  
265 of any referendum, canvassing the results thereof, and declaring the results of any referendum provided  
266 for in this title. The Board shall fix the date, hours, and voting places with respect to the holding of any  
267 referendum and may provide for voting by mail. No requirement of this section shall be governed by  
268 Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

269 Article 3.

270 Office of Consumer Affairs.

271 § 3.2-113. Office of Consumer Affairs.

272 There is hereby created in the Department the Office of Consumer Affairs, hereinafter referred to as  
273 the Office.

274 § 3.2-114. Powers and duties of Office.

275 A. The Office shall have only such powers as may be necessary to perform the following duties:

276 1. Promote consumer education in cooperation with the Department of Education and inform the  
277 public of policies, decisions and legislation affecting consumers;

278 2. Serve as a central coordinating agency and clearinghouse for receiving and investigating  
279 complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices  
280 and referring appropriate complaints to the federal, state and local departments or agencies charged  
281 with enforcement of consumer laws;

282 3. Maintain records of consumer complaints and their eventual disposition, which records shall be  
283 open for public inspection, provided that information disclosing the business interests of any person,  
284 trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of  
285 such matters may be necessary for the enforcement of laws;

286 4. Enter into agreements or accept commissions from federal agencies; and

287 5. Exercise such powers and perform such duties as requested by the Commissioner under the  
288 Virginia Consumer Protection Act (§ 59.1-196 et seq.).

289 B. If the department or agency to which a complaint is referred pursuant to subdivision A 2  
290 determines that the matter cannot be settled at an administrative level, the complaint together with all  
291 supporting evidence may be transmitted to the appropriate enforcement officer for such legal action as  
292 may be necessary.

293 C. The responsibility of the Office in these matters shall not be limited to those areas of peculiar  
294 interest to the Department, but shall embrace the consumer programs and responsibilities of all the  
295 departments and agencies of the Commonwealth.

296 § 3.2-115. Payment of expenses of Office.

297 The expenses of the Office shall be paid from funds provided for that purpose by law. The  
298 Commissioner may supplement such funds from appropriations made to the Department for discretionary  
299 purposes.

300 CHAPTER 2.

301 PRESERVATION OF FARM AND FOREST LANDS.

302 Article 1.

303 Office of Farmland Preservation.

304 § 3.2-200. Agricultural Vitality Program continued as Office of Farmland Preservation.

305 *The Agricultural Vitality Program within the Department is continued and hereafter shall be known*  
306 *as the Office of Farmland Preservation.*

307 *§ 3.2-201. Powers and duties of Office of Farmland Preservation.*

308 *The Office of Farmland Preservation shall have the following powers and duties:*

309 *1. To develop, in cooperation with the Department of Business Assistance, the Virginia Farm Bureau*  
310 *Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia*  
311 *Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension: (i)*  
312 *model policies and practices that may be used as a guide to establish local purchase of development*  
313 *rights programs; (ii) criteria for the certification of local purchase of development rights programs as*  
314 *eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of*  
315 *revenue for allocating funds to localities to purchase agricultural conservation easements;*

316 *2. To create programs to educate the public about the importance of farmland preservation to the*  
317 *quality of life in the Commonwealth;*

318 *3. To provide technical, professional, and other assistance to farmers on matters related to farmland*  
319 *preservation; and*

320 *4. To administer the Virginia Farm Link program established pursuant to § 3.2-202.*

321 *§ 3.2-202. Virginia Farm Link program.*

322 *There is hereby created the Virginia Farm Link program to provide assistance to retiring farmers*  
323 *and individuals seeking to become active farmers in the transition of farm businesses and properties*  
324 *from retiring farmers to active farmers. Such assistance shall include: (i) assistance in the preparation*  
325 *of business plans for the transition of business interests; (ii) assistance in the facilitation of transfers of*  
326 *existing properties and agricultural operations to interested buyers; (iii) information on innovative*  
327 *farming methods and techniques; and (iv) research assistance on agricultural, financial, marketing, and*  
328 *other matters.*

329 *§ 3.2-203. Reporting requirements.*

330 *The Commissioner shall submit a written report on the operation of the Office of Farmland*  
331 *Preservation by December 1 of each year to the chairmen of the House Committee on Agriculture,*  
332 *Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural*  
333 *Resources. The provisions of this chapter shall not preclude local purchase of development rights*  
334 *programs established pursuant to the Open-Space Land Act (§ 10.1-1700 et seq.) from being eligible to*  
335 *receive grants, loans, or other funds from public sources.*

#### 336 *Article 2.*

337 *Protection of Farm and Forest Lands.*

338 *§ 3.2-204. Review of capital projects.*

339 *In preparing its report on each major state project, as required in Article 2 (§ 10.1-1188 et seq.) of*  
340 *Chapter 11.1 of Title 10.1, each state agency shall demonstrate that it has considered the impact that*  
341 *project would have on farm and forest lands as required in § 3.2-205, and has adequately considered*  
342 *alternatives and mitigating measures. The Department of Environmental Quality, in conducting its*  
343 *review of each major state project, shall ensure that such consideration has been demonstrated and*  
344 *shall incorporate its evaluation of the effects that project would have on farm and forest lands in its*  
345 *comments to the Governor. The procedures for review of highway and road construction projects*  
346 *established in accordance with subsection B of § 10.1-1188 shall include provisions requiring that the*  
347 *factors listed in § 3.2-205 are considered as part of the review of each project.*

348 *§ 3.2-205. Characteristics to be considered in evaluating impacts on farm and forest lands.*

349 *A. In preparing environmental impact reports in accordance with § 3.2-204, state agencies shall*  
350 *consider the impact of the major state project on all farm and forest lands that:*

351 *1. Have soil classified as capability class I, II, III, or IV;*

352 *2. Have an exceptional combination of physical characteristics for the production of food, feed, fiber,*  
353 *forest products, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer,*  
354 *pesticides, and labor, and without intolerable soil erosion;*

355 *3. Are valuable for production of specific high-value food and fiber crops, such as fruits, vegetables,*  
356 *and nursery crops and have a special combination of soil quality, location, growing season, and*  
357 *moisture supply needed to economically produce sustained high quality or high yields of such crops*  
358 *when treated and managed according to acceptable farming methods;*

359 *4. Are of statewide or local importance for the production of food, feed, fiber, forest products,*  
360 *forage, or oilseed crops;*

361 *5. Have been recognized under a state program such as the Clean Water Farm Award or the*  
362 *Century Farm Program;*

363 *6. Are part of an agricultural or forestal district or are participating in a use value assessment and*  
364 *taxation program for real estate devoted to agricultural, horticultural, or forest use in accordance with*  
365 *the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1; or*

366 *7. Make a significant contribution to the local economy or the rural character of the area where the*

367 land is located.

368 B. The governing body of each locality, with the cooperation of the U.S. Department of Agriculture,  
369 may designate the important farmlands within its jurisdiction. In designating important farmlands the  
370 governing body shall demonstrate that adequate provision has been made for nonagricultural uses  
371 within its jurisdiction.

372 C. As used in this chapter, "farmland" includes all land defined as follows:

373 "Important farmland," other than prime or unique farmland, is land that is of statewide or local  
374 importance for the production of food, feed, fiber, forage, nursery, oilseed, or other agricultural crops,  
375 as determined by the appropriate state agency or local government agency, and that the U.S.  
376 Department of Agriculture determines should be considered as farmland for the purposes of this  
377 chapter;

378 "Prime farmland" is land that has the best combination of physical and chemical characteristics for  
379 producing food, feed, fiber, forage, oilseed, nursery, and other agricultural crops with minimum inputs  
380 of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. Prime farmland includes  
381 land that possesses the above characteristics but is being used currently to produce livestock and  
382 timber. It does not include land already in or committed to urban development or water storage; and

383 "Unique farmland" is land other than prime farmland that is used for production of specific  
384 high-value food and fiber crops, as determined by the U.S. Department of Agriculture. It has the special  
385 combination of soil quality, location, growing season, and moisture supply needed to economically  
386 produce sustained high quality or high yields of specific crops when treated and managed according to  
387 acceptable farming methods.

388 § 3.2-206. Certain agencies to prepare plans for implementation of policy.

389 The Department of Transportation, Department of Health, Department of Conservation and  
390 Recreation, State Corporation Commission, and Department of Environmental Quality shall each  
391 prepare a plan for the implementation of the policies set forth in this chapter. The plan shall contain an  
392 analysis of the impact that the agency's regulations and projects have on the conversion of farm and  
393 forest lands. The plan shall be updated and submitted to the Secretary of Agriculture and Forestry and  
394 the Secretary of Natural Resources annually. The Secretary of Agriculture and Forestry shall review the  
395 plan in consultation with the Commissioner and the State Forester, and may recommend improvements  
396 to the plan. The Secretary of Agriculture and Forestry shall submit a written report by December 1 of  
397 each year to the chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources  
398 and the Senate Committee on Agriculture, Conservation and Natural Resources on the impacts of state  
399 agency actions on the conversion of farm and forest lands.

400 CHAPTER 3.  
401 RIGHT TO FARM.

402 § 3.2-300. Definitions.

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

404 "Agricultural operation" means any operation devoted to the bona fide production of crops, or  
405 animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry  
406 products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from  
407 silviculture activity.

408 "Production agriculture and silviculture" means the bona fide production or harvesting of  
409 agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural  
410 products or the above ground application or storage of sewage sludge.

411 § 3.2-301. Right to farm; restrictive ordinances.

412 In order to limit the circumstances under which agricultural operations may be deemed to be a  
413 nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations,  
414 no county shall adopt any ordinance that requires that a special exception or special use permit be  
415 obtained for any production agriculture or silviculture activity in an area that is zoned as an  
416 agricultural district or classification. Counties may adopt setback requirements, minimum area  
417 requirements, and other requirements that apply to land on which agriculture and silviculture activity is  
418 occurring within the locality that is zoned as an agricultural district or classification. No locality shall  
419 enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and  
420 forestry practices in an agricultural district or classification unless such restrictions bear a relationship  
421 to the health, safety, and general welfare of its citizens. This section shall become effective on April 1,  
422 1995, and from and after that date all land zoned to an agricultural district or classification shall be in  
423 conformity with this section.

424 § 3.2-302. When agricultural operations do not constitute nuisance.

425 A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or  
426 public, if such operations are conducted in accordance with existing best management practices and  
427 comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not

428 *apply whenever a nuisance results from the negligent or improper operation of any such agricultural*  
 429 *operation or its appurtenances.*

430 *B. The provisions of subsection A shall not affect or defeat the right of any person to recover*  
 431 *damages for any injuries or damages sustained by them on account of any pollution of, or change in*  
 432 *condition of, the waters of any stream or on the account of any overflow of lands of any such person.*

433 *C. Any and all ordinances of any unit of local government now in effect or hereafter adopted that*  
 434 *would make the operation of any such agricultural operation or its appurtenances a nuisance or*  
 435 *providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall*  
 436 *be null and void. The provisions of this section shall not apply whenever a nuisance results from the*  
 437 *negligent or improper operation of any such agricultural operation or any of its appurtenances.*

#### 438 CHAPTER 4.

#### 439 AGRICULTURAL STEWARDSHIP.

440 § 3.2-400. *Definitions.*

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

442 *"Agricultural activity" means any activity used in the production of food and fiber, including*  
 443 *farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.*

444 *"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to*  
 445 *manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant*  
 446 *nutrients, pest controls, wastes, and animals.*

447 *"Board" means the Soil and Water Conservation Board.*

448 *"Complaint" means an allegation made by any person to the Commissioner that an owner's or*  
 449 *operator's agricultural activity is creating or, if not changed, will create pollution and that states the*  
 450 *location and nature of such agricultural activity.*

451 *"District" or "soil and water conservation district" means a political subdivision of the*  
 452 *Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title*  
 453 *10.1.*

454 *"Informal fact-finding conference" means an informal fact-finding conference conducted in*  
 455 *accordance with § 2.2-4019.*

456 *"Operator" means any person who exercises managerial control over any agricultural activity.*

457 *"Owner" means any person who owns land where an agricultural activity occurs.*

458 *"Pollution" means any alteration of the physical, chemical, or biological properties of any state*  
 459 *waters resulting from sedimentation, nutrients, or toxins.*

460 *"State waters" means all water, on the surface or in the ground, wholly or partially within or*  
 461 *bordering the Commonwealth or within its jurisdiction.*

462 *"Stewardship measures" or "measures" means measures for controlling the addition of pollutants*  
 463 *from existing and new categories and classes of nonpoint sources of pollution that reflect the pollutant*  
 464 *reduction achievable through the application of the best available nonpoint pollution control methods,*  
 465 *technologies, processes, siting criteria, operating methods, or other alternatives.*

466 *"Stewardship measures" or "measures" includes: (i) agricultural water quality protection*  
 467 *management measures described in the Virginia Agricultural Best Management Practices Manual; and*  
 468 *(ii) agricultural water quality protection management measures contained in the U.S. Department of*  
 469 *Agriculture's Natural Resources Conservation Service Field Office Technical Guide.*

470 § 3.2-401. *Exclusions from chapter.*

471 *This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et*  
 472 *seq.) of Chapter 11 of Title 10.1; or (ii) a permit issued by the State Water Control Board, applies.*

473 § 3.2-402. *Complaint; investigation; agricultural stewardship plan.*

474 *A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the*  
 475 *Commissioner shall request that the directors of the district where the land lies determine the validity of*  
 476 *the information within 21 days. The Commissioner may investigate or ask the directors of the district to*  
 477 *investigate an anonymous complaint.*

478 *B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's*  
 479 *request. If the district declines to act, it shall within five days so advise the Commissioner, who shall*  
 480 *determine the validity of the complaint.*

481 *C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to*  
 482 *prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the*  
 483 *owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner*  
 484 *determines that the pollution is a direct result of unusual weather events or other exceptional*  
 485 *circumstances that could not have been reasonably anticipated, or determines that the pollution is not a*  
 486 *threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial*  
 487 *uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the*  
 488 *district where the agricultural activity is located. The notice shall state that, within 60 days of the*  
 489 *receipt of the notice, the owner or operator shall submit to the Commissioner and district an*



490 agricultural stewardship plan that includes stewardship measures needed to prevent or cease the  
 491 pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner  
 492 shall approve the plan within 30 days after he receives it. Upon approving the owner's or operator's  
 493 plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been  
 494 approved. The owner or operator shall begin implementing the approved agricultural stewardship plan  
 495 within six months of the date that the owner or operator received the notice that the agricultural activity  
 496 is creating or will create pollution.

497 D. The plan shall include an implementation schedule, and implementation of the plan shall be  
 498 completed within a period specified by the Commissioner, based upon the seasons and other temporal  
 499 considerations so that the period is that during which the possibility of success in establishment or  
 500 construction of the measures required in the plan is the greatest, which shall not exceed 18 months from  
 501 receipt of notice. The Commissioner may grant an extension of up to 180 days if: (i) a hardship exists;  
 502 and (ii) the request for an extension was made not later than 60 days before the scheduled completion  
 503 date. The Commissioner shall, within 30 days of receiving the request, inform the owner or operator  
 504 whether or not an extension has been granted.

505 E. After implementing the approved plan according to the provisions of this chapter, the owner or  
 506 operator shall maintain the stewardship measures established pursuant to the plan. The owner or  
 507 operator may change the agricultural activity so long as the Commissioner is notified.

508 F. If the Commissioner determines that substantial evidence does not exist to prove that an  
 509 agricultural activity is creating or will create pollution or that any pollution was caused by unusual  
 510 weather events or other exceptional circumstances or that the pollution is not a threat to human health,  
 511 animal health, or aquatic life or recreational or other beneficial uses, he shall inform the complainant  
 512 and the owner or operator of his determination. Upon approving the owner's or operator's agricultural  
 513 stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan  
 514 has been approved.

515 § 3.2-403. Issuance of corrective orders.

516 A. If any owner or operator who has been issued a notice under § 3.2-402 fails to submit an  
 517 agricultural stewardship plan, begin actively implementing the plan, complete implementation of the  
 518 plan, or maintain the stewardship measures as provided in § 3.2-402, the Commissioner shall issue a  
 519 corrective order to such owner or operator. The order shall require that such activity be accomplished  
 520 within a stated period of time.

521 B. A corrective order issued pursuant to subsection A shall be issued only after an informal  
 522 fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the  
 523 time, place, and purpose thereof, and shall become effective not less than five days after date of delivery  
 524 to the last known address as provided in subsection C. The corrective order shall be suspended pending  
 525 appeal by the recipient made within five days after delivery of such order to the last known address of  
 526 the owner or operator.

527 C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt  
 528 requested, sent to the last known address of the owner or operator, or by personal delivery by an agent  
 529 of the Commonwealth.

530 D. Notwithstanding other provisions of this chapter, if the Commissioner determines that a recurring  
 531 polluting condition that is the subject of an approved plan is occurring or that an emergency condition  
 532 exists due to runoff from an agricultural activity that is causing or is likely to cause an imminent or  
 533 substantial danger to: (i) the public health, safety, or welfare or to the health of animals, fish, or  
 534 aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or  
 535 other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding  
 536 conference, or hearing, an emergency corrective order. Such order may direct the owner or operator of  
 537 the agricultural activity, or both, to cease immediately all or part of the agricultural activity and to  
 538 implement specified stewardship measures or any necessary emergency measures within a stated period  
 539 of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the  
 540 opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time  
 541 and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending, or  
 542 canceling the emergency corrective order.

543 E. The Commissioner shall not issue a corrective order to any land owner or operator if the person  
 544 is:

545 1. Actively implementing the agricultural stewardship plan that has been reviewed by the district  
 546 where the agricultural activity is located and approved by the Commissioner, or

547 2. Actively implementing stewardship measures that have failed to prevent pollution, if the  
 548 Commissioner determines that the pollution is a direct result of unusual weather events or other  
 549 exceptional circumstances that could not have been reasonably anticipated.

550 § 3.2-404. Right of entry; court enforcement.

551 A. The district or the Commissioner may enter land that is the subject of a complaint, after notice to  
552 the owner or operator, to determine whether the agricultural activity is causing or will cause pollution  
553 of state waters.

554 B. Upon failure of any owner or operator to allow the Commissioner entry in accordance with  
555 subsection A, to implement stewardship measures in the time specified in a corrective order, or to  
556 maintain stewardship measures in accordance with subsection E of § 3.2-402, the Commissioner may  
557 present to the circuit court of the county or city where the land is located, a petition asking the court to  
558 require the owner or operator to allow the Commissioner entry or to carry out such measures within a  
559 specified time. If the owner or operator fails to implement the stewardship measures specified in the  
560 court order, the Commissioner may enter the land involved and implement the measures. The  
561 Commissioner may to recover the costs of implementing the stewardship measures from the owner or  
562 operator.

563 § 3.2-405. Appeal.

564 Decisions of the Commissioner may be appealed by persons aggrieved to the Board and thereafter to  
565 the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition  
566 of any civil penalty shall be suspended pending such appeals.

567 § 3.2-406. Penalties; injunctions; enforcement actions.

568 A. Any person violating § 3.2-403 or 3.2-404 shall be subject to a civil penalty not to exceed \$5,000  
569 for every violation assessed by the Commissioner or Board. Each day the violation continues is a  
570 separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to  
571 be used by the Department of Conservation and Recreation to provide financial assistance to persons  
572 implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No  
573 person who has been assessed a civil penalty under this section shall be eligible for such financial  
574 assistance until the violation has been corrected and the penalty paid.

575 B. In determining the amount of any penalty, factors to be considered shall include the willfulness of  
576 the violation, any history of noncompliance, the actions of the owner or operator in notifying,  
577 containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its  
578 uses, and the nature and degree of injury to or interference with general health, welfare and property.

579 C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate  
580 legal action on behalf of the Commissioner or Board to enforce the provisions of this chapter.

581 § 3.2-407. Liens.

582 If a person who is required to pay a civil penalty under this chapter fails to do so, the  
583 Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit  
584 court of any county or city wherein it is ascertained that the person owing such penalty has any estate;  
585 and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be  
586 recorded, and shall index it in the name of the Commonwealth as well as in the name of the person  
587 owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the  
588 property within such locality of the person owing the civil penalty in the amount of the civil penalty.  
589 The Commissioner and Board may collect civil penalties that are owed in the same manner as provided  
590 by law in respect to judgment of a circuit court.

591 § 3.2-408. Guidelines to be published by Commissioner; report.

592 A. In consultation with the districts, the Department of Conservation and Recreation, and interested  
593 persons, the Commissioner shall develop guidelines for the implementation of this chapter. These  
594 guidelines shall address, among other things, the conduct of investigations, sources of assistance for  
595 owners and operators, and intergovernmental cooperation. Within 90 days of the effective date of this  
596 section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for  
597 publication in the Virginia Register of Regulations. At least 30 days shall be provided for public  
598 comment after the publication of the proposed guidelines. After the close of the public comment period,  
599 the Commissioner shall consider the comments that he has received and may incorporate any changes  
600 into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the  
601 comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall  
602 submit final guidelines for publication in the Register. The guidelines shall become effective on April 1,  
603 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been  
604 published in the Register and a public comment period has been provided.

605 B. The Commissioner shall compile a report by August 31 annually listing the number of complaints  
606 received, the nature of each complaint, the actions taken in resolution of each complaint, and any  
607 penalties that may have been assessed. The Commissioner shall have the discretion to exclude and keep  
608 confidential specific information regarding ongoing investigations. The Commissioner shall: (i) provide  
609 the report to the Board, the Department of Conservation and Recreation, and to every district; (ii)  
610 publish notice in the Virginia Register that the report is available; and (iii) make the report available to  
611 the public upon request.

612 § 3.2-409. Ordinances.

613 A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural  
 614 stewardship plan development program. Ordinances adopted hereunder may contain only provisions that  
 615 parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal  
 616 sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to  
 617 implement a plan, the local governing body shall submit a complaint to the Commissioner as provided  
 618 in § 3.2-402.

619 B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted  
 620 pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

621 § 3.2-410. Construction of chapter.

622 Nothing in this chapter shall be construed as duplicative of regulations governing agricultural  
 623 practices under the Chesapeake Bay Preservation Act.

624 CHAPTER 5.

625 FARMER MAJOR DROUGHT, FLOOD, AND HURRICANE DISASTER ASSISTANCE.

626 § 3.2-500. Definitions.

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

628 "Farmer" means any person who derives at least 75 percent of his gross income from a farming  
 629 operation in the Commonwealth as reported on his federal income tax forms the previous year, or a  
 630 farmer who receives or is eligible to receive a federal loan and who owns or leases land that would be  
 631 eligible for special tax assessments pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title  
 632 58.1. It shall not be necessary for any locality to adopt an ordinance pursuant to § 58.1-3231 in order  
 633 to effectuate the provisions of this section relating to special tax assessments.

634 "Major disaster" means any hurricane, flood, or drought that would warrant a disaster declaration  
 635 request by the Governor pursuant to the provisions of Section 301 of Public Law 93-288, 42 U.S.C.  
 636 5141.

637 § 3.2-501. Declaration by Governor.

638 The provisions of this chapter shall be effective from the time that the Governor makes a request  
 639 pursuant to Section 301 of Public Law 93-288, 42 U.S.C. 5141, until the Governor declares that the  
 640 effects of the disaster have been abated.

641 § 3.2-502. Administration.

642 The Commissioner shall establish administrative procedures necessary to give effect to this chapter  
 643 including the adoption of regulations.

644 § 3.2-503. Duties of Extension Division of Virginia Polytechnic Institute and State University.

645 A. Personnel of the Extension Division of Virginia Polytechnic Institute and State University shall  
 646 inform local governing bodies of the Commonwealth whenever agricultural conditions are present in  
 647 such localities that would warrant the declaration of a disaster pursuant to Section 301 of Public Law  
 648 93-288, 42 U.S.C. 5141.

649 B. Personnel of the Extension Division of Virginia Polytechnic Institute and State University shall  
 650 provide farmers and local governing bodies with such assistance and information as is available  
 651 concerning federal and state disaster relief programs.

652 § 3.2-504. Loans.

653 The Governor or his designee may approve a loan to any farmer who has suffered the effects of a  
 654 major disaster upon the recommendation of the Commissioner and subject to the following terms and  
 655 conditions:

656 1. The assistance provided for in this section shall not be extended unless the farmer has applied for  
 657 and received approval for a loan exceeding the amount requested pursuant hereto from any federal  
 658 agency providing disaster relief loans. Upon approval of a loan by such federal agency, the Governor  
 659 or his designee may approve a loan not to exceed \$10,000.

660 2. The loan shall be available only for operating expenses for the farming operation.

661 3. No interest shall be charged for the loan.

662 4. Repayment shall be made within one year or upon receipt of loan funds from any federal agency  
 663 providing disaster relief, whichever is sooner. The Department may require the farmer to provide  
 664 sufficient security or to make provision for direct payment from federal lending agencies of the entire  
 665 amount of the loan made pursuant to this chapter as a condition of granting the loan.

666 5. A maximum of \$10,000 may be loaned any one farmer. The Governor at his discretion may  
 667 reduce or increase the maximum amount of the loan.

668 6. The availability of loans provided for in this section shall be based on and subject to the moneys  
 669 accumulated in the Farmers Major Disaster Fund established in § 3.2-506.

670 § 3.2-505. Emergency services.

671 A. The Commissioner may develop and initiate programs of general relief to farmers affected by  
 672 major disasters and to expend moneys from the Farmers Major Disaster Fund in order to implement  
 673 such programs. Programs created pursuant hereto shall include but not be limited to the following:

674 1. Programs to assist farmers in their feed needs including the supplying of feed at cost.  
 675 2. Programs to provide supplemental manpower to those state and federal agencies involved in relief  
 676 efforts to aid farmers.

677 B. Any locality may develop and initiate a grant program to supply emergency financial assistance to  
 678 farmers in the locality to offset a portion of any operating losses resulting from a major disaster as  
 679 declared by the Governor pursuant to § 44-146.17.

680 § 3.2-506. Farmers Major Disaster Fund established.

681 There is hereby created in the state treasury a special nonreverting fund to be known as the Farmers  
 682 Major Disaster Fund, hereafter referred to as "the Fund." The Fund shall be established on the books  
 683 of the Comptroller. All moneys allocated by the Governor from appropriations made to the Governor for  
 684 disaster planning and operations pursuant to the declaration of the state disaster under Chapter 3.2  
 685 (§ 44-146.13 et seq.) of Title 44 shall be paid into the state treasury and credited to the Fund. Interest  
 686 earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in  
 687 the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund  
 688 but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of emergency  
 689 services programs pursuant to § 3.2-505 and all loans made pursuant to this chapter. Expenditures and  
 690 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the  
 691 Comptroller upon written request signed by the Commissioner.

#### 692 CHAPTER 6.

### 693 RETURN AND FUTURE ADMINISTRATION OF ASSETS OF VIRGINIA RURAL REHABILITATION 694 CORPORATION.

695 § 3.2-600. Commissioner designated to apply for and receive trust assets held by United States.

696 The Commissioner is designated as the Commonwealth official to make application to and receive  
 697 from the U.S. Department of Agriculture, or any other proper federal official, pursuant and subject to  
 698 the provisions of the federal Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 et  
 699 seq.), the trust assets, either funds or property, held by the United States as trustee on behalf of the  
 700 Virginia Rural Rehabilitation Corporation.

701 § 3.2-601. Agreements of Commissioner with U.S. Department of Agriculture.

702 The Commissioner, with the advice of the Board, may enter into agreements with the U.S.  
 703 Department of Agriculture pursuant to § 2 (f) of the federal Rural Rehabilitation Corporation Trust  
 704 Liquidation Act (40 U.S.C. 440 et seq.), upon such terms and conditions and for such periods of time as  
 705 may be mutually agreeable, authorizing the U.S. Department of Agriculture to accept, administer,  
 706 expend, and use in the Commonwealth all or any part of such trust assets for carrying out the purposes  
 707 of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions  
 708 of Title IV thereof, as now or hereafter amended, and may do any and all things necessary to effectuate  
 709 and carry out the purposes of said agreements.

710 § 3.2-602. Virginia Farm Loan Revolving Account.

711 Notwithstanding any other provisions of law, funds and the proceeds of the trust assets that are not  
 712 authorized to be administered by the U.S. Department of Agriculture under the provisions of § 3.2-601  
 713 shall be paid to and received by the Commissioner and by him paid into the state treasury for credit to  
 714 an account to be known as the "Virginia Farm Loan Revolving Account." The entire amount so  
 715 received, together with any moneys appropriated for such purposes, is hereby appropriated out of the  
 716 Virginia Farm Loan Revolving Account for expenditure by the Commissioner for such of the rural  
 717 rehabilitation purposes permissible under the charter of the now dissolved Virginia Rural Rehabilitation  
 718 Corporation, as may from time to time be agreed upon by the Commissioner and the U.S. Department  
 719 of Agriculture, subject to the applicable provisions of the federal Rural Rehabilitation Corporation Trust  
 720 Liquidation Act (40 U.S.C. 440 et seq.), or for the purposes of § 3.2-601. Such expenditure shall be paid  
 721 by the State Treasurer on warrants of the Comptroller issued on vouchers signed by the Commissioner.

722 § 3.2-603. Further powers of Commissioner; delegation to Secretary of Agriculture.

723 The Commissioner may:

724 1. Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under  
 725 this chapter or under any mortgage, lease, contract, or agreement entered into or administered pursuant  
 726 to this chapter and, if in his judgment necessary and advisable, pursue the same to final collection in  
 727 any appropriate court;

728 2. Bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property  
 729 where the Commissioner has a lien by reason of judgment or execution, or that is pledged, mortgaged,  
 730 conveyed, or otherwise secures any loan or other indebtedness owing to or acquired by the  
 731 Commissioner under this chapter; and

732 3. Accept title to any property so purchased or acquired; to operate or lease such property for such  
 733 period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose  
 734 of such property in a manner consistent with the provisions of this chapter.

735 The authority herein contained may be delegated to the U.S. Department of Agriculture with respect

736 to funds or assets authorized to be administered and used by him under agreements entered into  
737 pursuant to § 3.2-601.

738 § 3.2-604. Liability of the U.S. Department of Agriculture.

739 The United States and the Secretary of Agriculture thereof shall be held free from liability by virtue  
740 of the transfer of assets to the Commissioner pursuant to this chapter.

741 CHAPTER 7.

742 TREE AND CROP PESTS.

743 Article 1.

744 Pests.

745 § 3.2-700. Definitions.

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

747 "Certificate" means a document issued or authorized by the Commissioner indicating that a regulated  
748 article is not contaminated with a pest.

749 "Host" means any plant or plant product upon which a pest is dependent for completion of any  
750 portion of its life cycle.

751 "Infested" means actually infested or infected with a pest or so exposed to infestation that it would  
752 be reasonable to believe that an infestation exists.

753 "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport,  
754 move or allow to be moved.

755 "Permit" means a document issued or authorized by the Commissioner to provide for the movement  
756 of regulated articles to restricted destinations for limited handling, utilization, or processing.

757 "Person" means the term as defined in § 1-230. The term also means any society.

758 "Pest" means an insect, disease, parasitic plant, or other organism of any character whatever, in any  
759 living stage, vertebrate or invertebrate, causing or capable of causing injury or damage to any plant or  
760 part thereof or any processed, manufactured, or other product of plants, or otherwise creating a public  
761 nuisance.

762 "Regulated article" means any article of any character carrying or capable of carrying the pest  
763 against which the quarantine is directed.

764 § 3.2-701. Administration; regulations.

765 The Commissioner shall protect the agricultural, horticultural, and other interests of the  
766 Commonwealth from plant pests and supervise and direct the execution of this article and regulations  
767 adopted hereunder.

768 § 3.2-702. Abundance surveys; eradication or suppression of pests.

769 The Commissioner shall direct abundance surveys for plant pests and may carry out operations or  
770 measures to locate, suppress, control, eradicate, prevent, or retard the spread of pests. When the  
771 Commissioner determines that a new or dangerous or highly injurious plant pest exists within the  
772 Commonwealth or that an established pest requires control and the nature of the pest dictates  
773 immediate action, he may proceed with eradication or suppression. Provided further, that whenever the  
774 Commissioner intends to go upon any property for the purpose of eradicating or suppressing pests, he  
775 shall before entering upon any such property, give a written notice to the owner or occupant thereof at  
776 least 24 hours prior to such entry, setting forth in detail the purpose or purposes for which such entry  
777 shall be made.

778 In the event the Commissioner determines a plant pest does not require immediate action, he shall  
779 report his findings, including the nature of the pest and method of proposed treatment, to the Board in  
780 writing and to the property owners or persons in charge of the property concerned by printing a copy  
781 thereof, at least once, in at least one newspaper of general circulation in the locality concerned. In case  
782 of objection to the action proposed, an appeal shall lie to the Board. Such appeal shall be taken within  
783 seven days from the issue of the notice and shall act as a stay of proceedings insofar as the property of  
784 the person noting the appeal is concerned until it is heard and decided.

785 § 3.2-703. Authority to quarantine.

786 The Board may quarantine the Commonwealth or any portion thereof when it determines that such  
787 action is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth.  
788 Before a quarantine is adopted, the Board shall, after due public notice, hold a public hearing in  
789 accordance with the Administrative Process Act (§ 2.2-4000 et seq.), at which hearing any interested  
790 party may appear and be heard either in person or by attorney. Notwithstanding the provisions of  
791 § 2.2-4002 or any other law to the contrary, the Commissioner may impose a temporary quarantine for  
792 a period not to exceed 90 days. A public hearing, as provided herein, shall be held if it appears that a  
793 quarantine for more than the 90-day period will be necessary to prevent or retard the spread of the  
794 pest. The Commissioner shall give notice of the establishment of the quarantine in a newspaper having  
795 general circulation in the area affected by the quarantine. The Commissioner may limit the application  
796 of the temporary or permanent quarantine to the infested area and appropriate environs, to be known as

797 *the regulated areas, and may without further hearing extend or reduce the regulated area upon*  
798 *publication of a notice to that effect in a newspaper having general circulation in the area affected by*  
799 *the quarantine or by direct written notice to those concerned. Any temporary quarantine imposed by the*  
800 *Commissioner or any extensions or reductions in the regulated areas pursuant to this section shall be*  
801 *reviewed by the Board at its next regularly scheduled meeting, such review by the Board shall be made*  
802 *within 90 days of the Commissioner's action.*

803 *Following establishment of a quarantine, no person shall move any regulated article described in the*  
804 *quarantine or move the pest against which the quarantine is established, within, from, into, or through*  
805 *the Commonwealth contrary to regulations.*

806 *The regulations may restrict the movement of the pest and any regulated articles from the regulated*  
807 *area in the Commonwealth into or through other parts of the Commonwealth or other states and from*  
808 *the regulated area in other states into or through the Commonwealth and shall impose such inspection,*  
809 *disinfection, certification, or permit and other requirements as the Commissioner deems necessary to*  
810 *effectuate the purposes of this article. The Commissioner may issue administrative instructions relating*  
811 *to the enforcement of regulations including acceptable certification procedures, regulated articles, and*  
812 *exemptions.*

813 *§ 3.2-704. Quarantine against regulated articles in other states.*

814 *When the Board has good reason to believe in the existence of infested regulated articles in*  
815 *localities in other states, territories, or countries, or that conditions exist that, in the judgment of the*  
816 *Board, render the importation of such regulated articles from such localities a menace to the health of*  
817 *the Commonwealth, the Board shall, by proclamation, prohibit the importation of any regulated article*  
818 *from any locality of other states, territories, or countries, into the Commonwealth.*

819 *§ 3.2-705. Authority for abatement and other emergency measures; compensation to property owners.*

820 *Whenever the Commissioner finds any article that is infested or reasonably believed to be infested or*  
821 *a host or pest exists on any property or is in transit in the Commonwealth, he may require full*  
822 *information as to origin, number and destination of same and, upon giving notice to the owner or his*  
823 *agent in possession thereof, seize, quarantine, treat, or otherwise dispose of such pest, host, or article in*  
824 *such manner as the Commissioner deems necessary to suppress, control, eradicate, prevent, or retard*  
825 *the spread of a pest; or the Commissioner may order such owner or agent to so treat or otherwise*  
826 *dispose of the pest, host, or article. The owner of any property destroyed or ordered to be treated or*  
827 *otherwise disposed of under this section may, in an action against the Commonwealth in the appropriate*  
828 *court, recover just compensation for any property so destroyed or the reasonable costs of disposal of*  
829 *any property so ordered if he establishes that the property was not a pest, or a host, or an infested*  
830 *article.*

831 *§ 3.2-706. Authority for inspections; warrants.*

832 *To effectuate the purpose of this article, the Commissioner may, with a warrant or with the consent*  
833 *of the owner, make reasonable inspections of any property in the Commonwealth and may, without a*  
834 *warrant, stop and inspect, in a reasonable manner, any means of conveyance moving within the*  
835 *Commonwealth, upon probable cause that it contains or carries any pest, host, or other regulated*  
836 *article subject to this article, and may make any other reasonable inspection of any property or means*  
837 *of conveyance for which, under the Constitution of the United States and the Constitution of the*  
838 *Commonwealth, no warrant is required.*

839 *In accordance with § 19.2-52, the appropriate persons have authority to issue warrants for such*  
840 *inspections upon a showing by the Commissioner that there is probable cause to believe that there exists*  
841 *in or on the property to be inspected a pest, host, or other regulated article subject to this article.*

842 *§ 3.2-707. Cooperation with other agencies and private organizations.*

843 *When the Commissioner deems it necessary to suppress, control, eradicate, prevent, or retard the*  
844 *spread of any pest, he may cooperate with:*

- 845 *1. Any agency of the federal government, and may expend state funds on federal lands;*
- 846 *2. Any agency of an adjacent state if the use of funds appropriated to carry out this article for*  
847 *operations in an adjacent are approved in advance by the Governor or his designee;*
- 848 *3. Any agency of a local government within the Commonwealth; and*
- 849 *4. Any public and private organizations within the Commonwealth.*

850 *§ 3.2-708. Cooperative Suppression Program Fund established.*

851 *The Cooperative Suppression Program Fund is hereby established as a special fund on the books of*  
852 *the State Comptroller, and all moneys credited to such fund are hereby appropriated for the purpose set*  
853 *forth in the Department's Gypsy Moth Cooperative Suppression Program Guidelines and shall be used*  
854 *exclusively for the administration of the Cooperative Suppression Program. Moneys for such fund may*  
855 *be derived from appropriations from the general fund of the state treasury; grants of private or*  
856 *government money designated for specified activities pursuant to the Suppression Program; fees for*  
857 *services rendered pursuant to the Suppression Program; payment for products, equipment, or material*  
858 *or any other thing supplied by the Commissioner; payment for educational publications, materials or*

859 supplies provided by the Commissioner, and grants, bequests and donations. All funds collected for,  
 860 appropriated, or received by the Commissioner shall be paid into the state treasury to the credit of the  
 861 Gypsy Moth Cooperative Suppression Program Fund. No part of such fund shall revert to the general  
 862 fund of the state treasury.

863 § 3.2-709. Authority for compensation to growers in infested areas.

864 The Commissioner, when he determines that it is necessary to fulfill the objectives of this article,  
 865 may authorize the payment of reasonable compensation to growers in infested areas for eliminating or  
 866 not planting host crops, or otherwise controlling the target pest, pursuant to instructions issued by the  
 867 Commissioner or for losses or expenses resulting from the destruction of any host or regulated articles.  
 868 No payment shall be authorized for the destruction of regulated articles moved in violation of any  
 869 regulation or any hosts planted contrary to instructions issued by the Commissioner.

870 § 3.2-710. Penalties.

871 A. Any person who violates any of the provisions of this article, or who alters, forges, or  
 872 counterfeits, or uses without authority any certificate or permit or other document provided for in this  
 873 article or in the regulations of the Board adopted hereunder is guilty of a Class 1 misdemeanor.

874 B. Any person who has knowingly moved any regulated article into the Commonwealth from any  
 875 quarantined area of any other state, which regulated article has not been treated or handled under  
 876 provisions of the quarantine and regulations in effect at the point of origin, is guilty of a Class 1  
 877 misdemeanor.

878 § 3.2-711. Costs of administration; reimbursements to Commonwealth.

879 Costs of administering this law shall be borne by the Commonwealth. The costs for services,  
 880 products, or articles that the Commissioner determines are beyond the reasonable scope of the law,  
 881 shall be paid by the persons affected to the State Treasurer. The Commissioner shall cause all  
 882 reimbursements to be promptly credited to the State fund from which expended, regardless of the date  
 883 the costs were incurred or collected.

884 § 3.2-712. Permit required to sell and transport plant pests.

885 No person shall sell, barter, offer for sale, move, transport, deliver, ship, or offer for shipment into  
 886 or within the Commonwealth any plant pests in any living stage without first obtaining a permit from  
 887 the Commissioner. Such permit shall be issued only after it has been determined that the plant pests are  
 888 not injurious, are generally present already, or are for scientific purposes subject to specified  
 889 safeguards.

890 § 3.2-713. Judicial review.

891 Judicial review of any action of the Board or the Commissioner shall be in accordance with the  
 892 Administrative Process Act (§ 2.2-4000 et seq.).

893 Article 2.

894 Pest Control Compact.

895 § 3.2-714. Definitions.

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

897 "Executive committee" means the committee established pursuant to § 3.2-719 of this compact.

898 "Executive head" means the Governor.

899 "Governing board" means the administrators of this compact representing all of the party states  
 900 when such administrators are acting as a body in pursuance of authority vested in them by this  
 901 compact.

902 "Insurance fund" means the Pest Control Insurance Fund established pursuant to this compact.

903 "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar or allied organism that  
 904 can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.

905 "Requesting state" means a state that invokes the procedures of the compact to secure the  
 906 undertaking or intensification of measures to control or eradicate one or more pests within one or more  
 907 other states.

908 "Responding state" means a state requested to undertake or intensify measures to control or  
 909 eradicate one or more pests.

910 § 3.2-715. Compact enacted into law and entered into.

911 The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions  
 912 legally joining therein when the form of the compact is substantially the same as the compact entered  
 913 into by the Commonwealth.

914 § 3.2-716. Findings.

915 The party states find that:

916 1. In the absence of the higher degree of cooperation among them possible under this compact, the  
 917 annual loss of approximately seven billion dollars (\$7,000,000,000) from the depredations of pests is  
 918 virtually certain to continue, if not to increase.

919 2. Because of varying climatic, geographic and economic factors, each state may be affected

920 differently by particular species of pests; but all states share the inability to protect themselves fully  
921 against those pests that present serious dangers to them.

922 3. The migratory character of pest infestations make it necessary for states both adjacent to and  
923 distant from one another, to complement each other's activities when faced with conditions of infestation  
924 and reinfestation.

925 4. While every state is seriously affected by a substantial number of pests, and every state is  
926 susceptible of infestation by many species of pests not now causing damage to its crop and plant life  
927 and products, the fact that relatively few species of pests present equal danger to or are of interest to  
928 all states makes the establishment and operation of an insurance fund, from which individual states may  
929 obtain financial support for pest control programs of benefit to them in other states and to which they  
930 may contribute in accordance with their relative interests, the most equitable means of financing  
931 cooperative pest eradication and control programs.

932 § 3.2-717. The insurance fund.

933 There is hereby established the Pest Control Insurance Fund for the purpose of financing other than  
934 normal pest control operations that states may be called upon to engage in pursuant to this compact.  
935 The insurance fund shall contain moneys appropriated to it by the party states and any donations and  
936 grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party  
937 states expressly set forth in this compact, shall be unconditional and may not be restricted by the  
938 appropriating state to use in the control of any specified pest or pests. Donations and grants may be  
939 conditional or unconditional, provided that the insurance fund shall not accept any donation or grant  
940 whose terms are inconsistent with any provision of this compact.

941 § 3.2-718. The insurance fund, internal operations and management.

942 A. The insurance fund shall be administered by a governing board and executive committee as  
943 hereinafter provided. The actions of the governing board and executive committee pursuant to this  
944 compact shall be deemed the actions of the insurance fund.

945 B. The members of the governing board shall be entitled to one vote each on such board. No action  
946 of the governing board shall be binding unless taken at a meeting at which a majority of the total  
947 number of votes on the governing board are cast in favor thereof. Action of the governing board shall  
948 be only at a meeting at which a majority of the members are present.

949 C. The insurance fund shall have a seal that may be employed as an official symbol and that may be  
950 affixed to documents and otherwise used as the governing board may provide.

951 D. The governing board shall elect annually, from among its members, a chairman, a vice-chairman,  
952 a secretary, and a treasurer. The chairman may not succeed himself. The governing board may appoint  
953 an executive director and fix his duties and his compensation, if any. Such executive director shall serve  
954 at the pleasure of the governing board. The governing board shall make provision for the bonding of  
955 such of the officers and employees of the insurance fund as may be appropriate.

956 E. Irrespective of the civil service, personnel or other merit system laws of any of the party states,  
957 the executive director, or if there be no executive director, the chairman, in accordance with such  
958 procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be  
959 necessary for the performance of the functions of the insurance fund and shall fix the duties and  
960 compensation of such personnel. The governing board in its bylaws shall provide for the personnel  
961 policies and programs of the insurance fund.

962 F. The insurance fund may borrow, accept or contract for the services of personnel from any state,  
963 the United States, or any other governmental agency, or from any person, firm, association, or  
964 corporation.

965 G. The insurance fund may accept for any of its purposes and functions under this compact any and  
966 all donations, and grants of money, equipment, supplies, materials, and services, conditional or  
967 otherwise, from any state, the United States, or any other governmental agency, or from any person and  
968 may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the governing  
969 board pursuant to this paragraph or services borrowed pursuant to subsection F shall be reported in  
970 the annual report of the insurance fund. Such report shall include the nature, amount, and conditions, if  
971 any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

972 H. The governing board shall adopt bylaws for the conduct of the business of the insurance fund and  
973 shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in  
974 convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate  
975 agency or officer in each of the party states.

976 I. The insurance fund annually shall make to the Governor and legislature of each party state a  
977 report covering its activities for the preceding year. The insurance fund may make such additional  
978 reports as it may deem desirable.

979 J. In addition to the powers and duties specifically authorized and imposed, the insurance fund may  
980 do such other things as are necessary and incidental to the conduct of its affairs pursuant to this  
981 compact.



982 § 3.2-719. Compact and insurance fund administration.

983 A. In each party state there shall be a compact administrator, who shall be selected and serve in  
984 such manner as the laws of his state may provide, and who shall:

985 1. Assist in the coordination of activities pursuant to the compact in his state; and

986 2. Represent his state on the governing board of the insurance fund.

987 B. If the laws of the United States specifically so provide, or if administrative provision is made  
988 therefor within the federal government, the United States may be represented on the governing board of  
989 the insurance fund by not to exceed three representatives. Any such representative of the United States  
990 shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no  
991 such representative shall have a vote on the governing board or on the executive committee thereof.

992 C. The governing board shall meet at least once each year for the purpose of determining policies  
993 and procedures in the administration of the insurance fund and, consistent with the provisions of the  
994 compact, supervising and giving direction to the expenditure of moneys from the insurance fund.  
995 Additional meetings of the governing board shall be held on call of the chairman, the executive  
996 committee, or a majority of the membership of the governing board.

997 D. At such times as it may be meeting, the governing board shall pass upon applications for  
998 assistance from the insurance fund and authorize disbursements therefrom. When the governing board is  
999 not in session, the executive committee thereof shall act as agent of the governing board, with full  
1000 authority to act for it in passing upon such applications.

1001 E. The executive committee shall be composed of the chairman of the governing board and four  
1002 additional members of the governing board chosen by it so that there shall be one member representing  
1003 each of four geographic groupings of party states. The governing board shall make such geographic  
1004 groupings. If there is representation of the United States on the governing board, one such  
1005 representative may meet with the executive committee. The chairman of the governing board shall be  
1006 chairman of the executive committee. No action of the executive committee shall be binding unless taken  
1007 at a meeting at which at least four members of such committee are present and vote in favor thereof.  
1008 Necessary expenses of each of the five members of the executive committee incurred in attending  
1009 meetings of such committee, when not held at the same time and place as meetings of the governing  
1010 board, shall be charges against the insurance fund.

1011 § 3.2-720. Assistance and reimbursement.

1012 A. Each party state pledges to each other party state that it will employ its best efforts to eradicate,  
1013 or control within the strictest practicable limits, any and all pests. It is recognized that performance of  
1014 this responsibility involves:

1015 1. The maintenance of pest control and eradication activities of interstate significance by a party  
1016 state at a level that would be reasonable for its own protection in the absence of this compact.

1017 2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent  
1018 than would have been done in the absence of this compact.

1019 B. Whenever a party state is threatened by a pest not present within its borders but present within  
1020 another party state, whenever a party state is undertaking or engaged in activities for the control or  
1021 eradication of a pest or pests, and finds that such activities are or would be impracticable or  
1022 substantially more difficult of success by reason of failure of another party state to cope with infestation  
1023 or threatened infestation, that state may request the governing board to authorize expenditures from the  
1024 insurance fund for eradication or control measures to be taken by one or more of such other party  
1025 states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or  
1026 reinfestation of the requesting state. Upon such authorization the responding state or states shall take or  
1027 increase such eradication or control measures as may be warranted. A responding state shall use  
1028 moneys made available from the insurance fund expeditiously and efficiently to assist in affording the  
1029 protection requested.

1030 C. In order to apply for expenditures from the insurance fund, a requesting state shall submit the  
1031 following in writing:

1032 1. A detailed statement of the circumstances that occasion the request for the invoking of the  
1033 compact.

1034 2. Evidence that the pest on account of whose eradication or control assistance is requested  
1035 constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having  
1036 a substantial value to the requesting state.

1037 3. A statement of the extent of the present and projected program of the requesting state and its  
1038 subdivisions, including full information as to the legal authority for the conduct of such program or  
1039 programs and the expenditures being made or budgeted therefor, in connection with the eradication,  
1040 control, or prevention of introduction of the pest concerned.

1041 4. Proof that the expenditures being made or budgeted as detailed in subdivision 3 do not constitute  
1042 a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction,

1043 *the reasons why the level of program detailed in subdivision 3 constitutes a normal level of pest control*  
1044 *activity.*

1045 5. *A declaration as to whether, to the best of its knowledge and belief, the conditions that in its view*  
1046 *occasion the invoking of the compact in the particular instance can be abated by a program undertaken*  
1047 *with the aid of moneys from the insurance fund in one year or less, or whether the request is for an*  
1048 *installment in a program that is likely to continue for a longer period of time.*

1049 6. *Such other information as the governing board may require consistent with the provisions of this*  
1050 *compact.*

1051 *D. The governing board or executive committee shall give due notice of any meeting at which an*  
1052 *application for assistance from the insurance fund is to be considered. Such notice shall be given to the*  
1053 *compact administrator of each party state and to such other officers and agencies as may be designated*  
1054 *by the laws of the party states. The requesting state and any other party state shall be entitled to be*  
1055 *represented and present evidence and argument at such meeting.*

1056 *E. Upon the submission as required by subsection C and such other information as it may have or*  
1057 *acquire, and upon determining that an expenditure of funds is within the purposes of this compact and*  
1058 *justified thereby, the governing board or executive committee shall authorize support of the program.*  
1059 *The governing board or the executive committee may meet at any time or place for the purpose of*  
1060 *receiving and considering an application. Any and all determinations of the governing board or*  
1061 *executive committee, with respect to an application, together with the reasons therefor shall be recorded*  
1062 *and subscribed in such manner as to show and preserve the votes of the individual members thereof.*

1063 *F. A requesting state that is dissatisfied with a determination of the executive committee shall upon*  
1064 *notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to*  
1065 *receive a review thereof at the next meeting of the governing board. Determinations of the executive*  
1066 *committee shall be reviewable only by the governing board at one of its regular meetings, or at a*  
1067 *special meeting held in such manner as the governing board may authorize.*

1068 *G. Responding states required to undertake or increase measures pursuant to this compact may*  
1069 *receive moneys from the insurance fund, either at the time or times when such state incurs expenditures*  
1070 *on account of such measures, or as reimbursement for expenses incurred and chargeable to the*  
1071 *insurance fund. The governing board shall adopt and, from time to time, may amend or revise*  
1072 *procedures for submission of claims upon it and for payment thereof.*

1073 *H. Before authorizing the expenditure of moneys from the insurance fund pursuant to an application*  
1074 *of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance*  
1075 *or participation that may be available from the federal government and shall request the appropriate*  
1076 *agency of the federal government for such assistance and participation.*

1077 *I. The insurance fund may negotiate and execute a memorandum of understanding or other*  
1078 *appropriate instrument defining the extent and degree of assistance or participation between and among*  
1079 *the insurance fund, cooperating federal agencies, states and any other entities concerned.*

1080 § 3.2-721. *Advisory and technical committees.*

1081 *The governing board may establish advisory and technical committees composed of Commonwealth,*  
1082 *local, and federal officials, and private persons to advise it with respect to any one or more of its*  
1083 *functions. Any such advisory or technical committee, or any member or members thereof may meet with*  
1084 *and participate in its deliberations. Upon request of the governing board or executive committee an*  
1085 *advisory or technical committee may furnish information and recommendations with respect to any*  
1086 *application for assistance from the insurance fund being considered by such board or committee and the*  
1087 *board or committee may receive and consider the same; provided that any participant in a meeting of*  
1088 *the governing board or executive committee held pursuant to subsection D of § 3.2-720 of the compact*  
1089 *shall be entitled to know the substance of any such information and recommendations, at the time of the*  
1090 *meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which*  
1091 *the governing board or executive committee makes its disposition of the application.*

1092 § 3.2-722. *Relations with nonparty jurisdictions.*

1093 *A. A party state may make application for assistance from the insurance fund in respect of a pest in*  
1094 *a nonparty state. Such application shall be considered and disposed of by the governing board or*  
1095 *executive committee in the same manner as an application with respect to a pest within a party state,*  
1096 *except as provided in this section.*

1097 *B. At or in connection with any meeting of the governing board or executive committee held*  
1098 *pursuant to subsection D of § 3.2-720 of this compact a nonparty state shall be entitled to appear,*  
1099 *participate, and receive information only to such extent as the governing board or executive committee*  
1100 *may provide. A nonparty state shall not be entitled to review of any determination made by the*  
1101 *executive committee.*

1102 *C. The governing board or executive committee shall authorize expenditures from the insurance fund*  
1103 *to be made in a nonparty state only after determining that the conditions in such state and the value of*  
1104 *such expenditures to the party states as a whole justify them. The governing board or executive*

1105 committee may set any conditions that it deems appropriate with respect to the expenditure of moneys  
 1106 from the insurance fund in a nonparty state and may enter into such agreement or agreements with  
 1107 nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect  
 1108 the interests of the insurance fund with respect to expenditures and activities outside of party states.

1109 § 3.2-723. Finance.

1110 A. The insurance fund shall submit to the executive head or designated officer or officers of each  
 1111 party state a budget for the insurance fund for such period as may be required by the laws of that party  
 1112 state for presentation to the legislature thereof.

1113 B. Each of the budgets shall contain specific recommendations of the amount or amounts to be  
 1114 appropriated by each of the party states. The requests for appropriations shall be apportioned among  
 1115 the party states as follows: One tenth of the total budget in equal shares and the remainder in  
 1116 proportion to the value of agricultural and forest crops and products, excluding animals and animal  
 1117 products, produced in each party state. In determining the value of such crops and products the  
 1118 insurance fund may employ such source or sources of information as in its judgment present the most  
 1119 equitable and accurate comparisons among the party states. Each of the budgets and requests for  
 1120 appropriations shall indicate the source or sources used in obtaining information concerning value of  
 1121 products.

1122 C. The financial assets of the insurance fund shall be maintained in two accounts to be designated  
 1123 respectively as the "operating account" and the "claims account." The operating account shall consist  
 1124 only of those assets necessary for the administration of the insurance fund during the next ensuing  
 1125 two-year period. The claims account shall contain all moneys not included in the operating account and  
 1126 shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the  
 1127 insurance fund for a period of three years. At any time when the claims account has reached its  
 1128 maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation  
 1129 by the party states, the governing board shall reduce its budget requests on a pro rata basis in such  
 1130 manner as to keep the claims account within such maximum limit. Any moneys in the claims account by  
 1131 virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this  
 1132 paragraph only to the extent that such moneys are available to meet demands arising out of claims.

1133 D. The insurance fund shall not pledge the credit of any party state. The insurance fund may meet  
 1134 any of its obligations in whole or in part with moneys available to it under subsection G of § 3.2-718 of  
 1135 this compact, provided that the governing board takes specific action setting aside such moneys prior to  
 1136 incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund  
 1137 makes use of moneys available to it under subsection G of § 3.2-718 hereof, the insurance fund shall not  
 1138 incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

1139 E. The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts  
 1140 and disbursements of the insurance fund shall be subject to the audit and accounting procedures  
 1141 established under its bylaws. All receipts and disbursements of funds handled by the insurance fund  
 1142 shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be  
 1143 included in and become part of the annual report of the insurance fund.

1144 F. The accounts of the insurance fund shall be open at any reasonable time for inspection by duly  
 1145 authorized officers of the party states and by any persons authorized by the insurance fund.

1146 § 3.2-724. Entry into force and withdrawal.

1147 A. This compact shall enter into force when enacted into law by any five or more states. Thereafter,  
 1148 this compact shall become effective as to any other state upon its enactment thereof.

1149 B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no  
 1150 such withdrawal shall take effect until two years after the executive head of the withdrawing state has  
 1151 given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal  
 1152 shall affect any liability already incurred by or chargeable to a party state prior to the time of such  
 1153 withdrawal.

1154 § 3.2-725. Construction and severability.

1155 This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of  
 1156 this compact shall be severable and if any phrase, clause, sentence or provision of this compact is  
 1157 declared to be contrary to the constitution of any state or of the United States or the applicability  
 1158 thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder  
 1159 of this compact and the applicability thereof to any government, agency, person or circumstance shall  
 1160 not be affected thereby. If this compact shall be held contrary to the constitution of any state  
 1161 participating herein, the compact shall remain in full force and effect as to the remaining party states  
 1162 and in full force and effect as to the state affected as to all severable matters.

1163 § 3.2-726. Cooperation by state departments and agencies.

1164 Consistent with law and within available appropriations, the departments, agencies and officers of  
 1165 the Commonwealth may cooperate with the insurance fund established by the Pest Control Compact.

1166 § 3.2-727. *Bylaws and amendments to be filed with the Department.*  
 1167 Pursuant to subsection H of § 3.2-718, copies of bylaws and amendments thereto shall be filed with  
 1168 the Department.

1169 § 3.2-728. *Commissioner designated compact administrator.*

1170 The compact administrator for the Commonwealth shall be the Commissioner. The duties of the  
 1171 compact administrator shall be deemed a regular part of the duties of his office.

1172 § 3.2-729. *Governor or Commissioner may request assistance from fund.*

1173 Within the meaning of subsection B of § 3.2-720 or subsection A of § 3.2-722, a request or  
 1174 application for assistance from the insurance fund may be made by the Governor or the Commissioner  
 1175 whenever in their judgment the conditions qualifying the Commonwealth for such assistance exist and it  
 1176 would be in the best interest of the Commonwealth to make such request.

1177 § 3.2-730. *Disposition of payments to Commonwealth.*

1178 The department, agency, or officer expending or becoming liable for an expenditure on account of a  
 1179 control or eradication program undertaken or intensified pursuant to the compact shall have credited to  
 1180 his account in the state treasury the amount or amounts of any payments made to the Commonwealth to  
 1181 defray the cost of such program, or any part thereof, or as reimbursement thereof.

1182 § 3.2-731. *Effective date.*

1183 The effective date shall be July 1, 1970.

1184 CHAPTER 8.  
 1185 NOXIOUS WEEDS.

1186 § 3.2-800. *Definitions.*

1187 As used in this chapter, unless the context requires a different meaning:

1188 "Certificate" means a document issued or authorized by the Commissioner indicating that a regulated  
 1189 article is not contaminated with a noxious weed.

1190 "Infested" means the establishment of a noxious weed or exposure to such weed, which would be  
 1191 reasonable cause to believe that establishment could occur.

1192 "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport,  
 1193 move, or allow to be moved.

1194 "Noxious weed" means any living plant, not widely disseminated, or part thereof, declared by the  
 1195 Board through regulations under this chapter, to be detrimental to crops, surface waters, including  
 1196 lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health or  
 1197 the economy.

1198 "Permit" means a document issued or authorized by the Commissioner to provide for movement of  
 1199 regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific  
 1200 purposes.

1201 "Quarantine" means a legal declaration by the Board that specifies:(i) the noxious weed; (ii) the  
 1202 articles to be regulated; (iii) conditions governing movement; and (iv) exemptions.

1203 "Person" means the term as defined in § 1-230. The term also means any society.

1204 "Regulated article" means any article of any character as described in this chapter or in the  
 1205 quarantine carrying or capable of carrying a noxious weed against which this chapter or the quarantine  
 1206 is directed.

1207 § 3.2-801. *Powers and duties of Commissioner.*

1208 The Commissioner shall exercise or perform the powers and duties imposed upon him by this  
 1209 chapter. The Commissioner shall make surveys for noxious weeds and when the Commissioner  
 1210 determines that an infestation exists within the Commonwealth, he may request the Board to declare the  
 1211 weed to be noxious under this chapter and the Board shall proceed as specified in § 3.2-802.

1212 The Commissioner in coordination with the Department of Game and Inland Fisheries shall develop  
 1213 a plan for the identification and control of noxious weeds in the surface waters and lakes of the  
 1214 Commonwealth.

1215 The Commissioner may cooperate with any person or any agency of the federal government in  
 1216 carrying out the provisions of this chapter.

1217 Expenses incurred on property owned or controlled by the federal government shall be reimbursed  
 1218 and refunded to the appropriation from which they were expended.

1219 The Commissioner may, upon request, cooperate with federal, other state agencies, or political  
 1220 subdivisions in the enforcement of the narcotics laws to the extent of preventing the spread of and  
 1221 destroying marijuana or hemp, Cannabis species, or other plants that produce drugs that have been  
 1222 condemned for destruction under the narcotics laws, and the expenses incurred shall be reimbursed and  
 1223 shall be refunded to the appropriation from which they were expended. Such drug producing plants are  
 1224 hereby declared noxious and subject to all provisions of this chapter pertaining to eradication and  
 1225 spread subject to the above conditions.

1226 § 3.2-802. *Powers and duties of Board; quarantine.*

1227 The Board shall establish by regulation, after a public hearing, those weeds deemed to be noxious

1228 weeds not otherwise so declared by the terms of this chapter. The Board may establish a statewide  
 1229 quarantine and adopt regulations pertaining to regulated articles and conditions governing movement,  
 1230 under which the Commissioner shall proceed to eradicate or suppress and prevent the dissemination of  
 1231 noxious weeds in the Commonwealth, and shall adopt other regulations as are necessary to carry out  
 1232 the purpose of this chapter. The Board may adopt regulations governing the movement of regulated  
 1233 articles entering the Commonwealth from without. Following the establishment of a quarantine, no  
 1234 person shall move any noxious weed or any regulated article described in the quarantine from any  
 1235 regulated area without a valid permit or certificate.

1236 Subsequent to the declaration of a quarantine by the Board, the Commissioner shall limit the  
 1237 application of the regulations pertinent to such quarantine to the infested portion of the Commonwealth  
 1238 and appropriate environs, which would be known as the regulated area and may, without further  
 1239 hearing, extend the regulated area to include additional portions of the Commonwealth upon publication  
 1240 of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to  
 1241 those concerned.

1242 § 3.2-803. Cost of controlling noxious weeds.

1243 The cost of controlling or eradicating noxious weeds on all property owned or controlled by a State  
 1244 department or political subdivision thereof or control authority, agency, commission, or board, including  
 1245 highways, roadways, streets, alleys, and rights-of-way, shall be paid by the entity out of funds  
 1246 appropriated for its use. When it is not feasible for the entity to conduct the control program, the  
 1247 Commissioner may proceed with the control and the entity shall reimburse the cost and these moneys  
 1248 shall be refunded to the appropriation from which they were expended.

1249 § 3.2-804. Prohibited acts; noxious weeds.

1250 No person shall violate any provisions of this chapter or any regulation adopted hereunder. No  
 1251 person shall move, transport, deliver, ship, or offer for shipment into or within the Commonwealth any  
 1252 noxious weed, or part thereof, without first obtaining a permit from the Commissioner. Such permit shall  
 1253 be issued only after it has been determined that the noxious weed is generally present already or it is  
 1254 for scientific purposes subject to prescribed safeguards.

1255 § 3.2-805. Authority to stop sale or delivery of noxious weeds.

1256 The Commissioner, in order to prevent the introduction or dissemination of noxious weeds, may stop  
 1257 delivery, stop sale, seize, destroy, treat, or order returned to the point of origin, at the owner's expense,  
 1258 any noxious weed, article, or substance whatsoever, if transported or moved within the Commonwealth,  
 1259 or if existing on any premise, or brought into the Commonwealth from any place outside thereof, if such  
 1260 is found by him to be infested with any noxious weed subject to the provisions of this chapter.

1261 § 3.2-806. Access to plants or plant products; State and local police cooperation upon request.

1262 The Commissioner shall have access to plants or plant products or any other article or substance  
 1263 suspected of being infested with a noxious weed for inspection and shall be provided with full  
 1264 information as to origin and destination of same by the person in possession of any plants or other  
 1265 articles.

1266 State and local police, upon request in specific instances, shall cooperate with the Commissioner in  
 1267 the enforcement of this chapter. This chapter shall supersede any ordinances in the Commonwealth  
 1268 insofar as carrying out its intent.

1269 § 3.2-807. Inspection of premises and conveyances.

1270 To effectuate the purpose of this chapter, the Commissioner may make reasonable inspections of any  
 1271 premises in the Commonwealth and any property therein or thereon and may stop and inspect in a  
 1272 reasonable manner any means of conveyance moving within the Commonwealth when there is probable  
 1273 cause to believe it maintains or carries any noxious weed subject to the provisions of this chapter.

1274 § 3.2-808. Injunctions.

1275 The Commissioner or landowner affected may apply to any appropriate court for an injunction and  
 1276 such court may grant a temporary or permanent injunction restraining a person from violating or  
 1277 continuing the violation of any provision of this chapter, or the Commissioner from the enforcement of  
 1278 any provision of this chapter, when the court determines that the testimony and evidence presented  
 1279 warrants such action, without reference to adequacy of any remedy existing at law.

1280 § 3.2-809. Penalty for violation.

1281 Any person who fails to comply with the provisions of this chapter or the regulations adopted  
 1282 hereunder is guilty of a Class 1 misdemeanor.

1283 CHAPTER 9.

1284 NUISANCE BIRDS.

1285 § 3.2-900. Definitions.

1286 As used in this chapter, unless the context requires a different meaning:

1287 "Nuisance birds" means blackbirds, red-winged blackbirds, grackles, cowbirds, pigeons, and  
 1288 starlings, or any other species so declared by regulations of the Board when causing or about to cause

1289 economic losses in the Commonwealth; becoming detrimental to the public health and welfare; defacing  
1290 or defiling public or private property or otherwise creating a public nuisance.

1291 "Person" means the term as defined in § 1-230. The term also means any society.

1292 § 3.2-901. Powers and duties of Commissioner.

1293 A. The Commissioner shall conduct investigations and surveys to determine economic losses or  
1294 public nuisances caused by nuisance birds and may develop a plan of action when he has determined  
1295 that they are causing or about to cause economic losses in the Commonwealth, are detrimental to the  
1296 public health and welfare, or otherwise create a public nuisance.

1297 B. The Commissioner may provide technical assistance to persons for the suppression of any  
1298 nuisance birds when it has been determined that they are defacing or defiling public or private  
1299 property.

1300 C. The Commissioner may appoint an advisory committee to evaluate facts in any particular  
1301 situation and to make recommendations to him on the course of action. Plan of action programs shall  
1302 be selected and executed so as to protect human life, other birds, and wildlife.

1303 D. The Commissioner may upon receipt of a complaint of a nuisance bird problem from an  
1304 individual property owner, tenant, or sharecropper, make an investigation and determine the degree of  
1305 assistance required. If after such investigation the Commissioner finds suppression necessary, he shall  
1306 recommend acceptable means and methods.

1307 E. The Commissioner may provide assistance and cooperate with federal agencies, other state  
1308 agencies, other states, political subdivisions of the Commonwealth, public and private agencies,  
1309 organizations, institutions, and persons in the exercise of the duties imposed upon him by this chapter.  
1310 Any plan of action conducted by the Commissioner under the provisions of this chapter shall be  
1311 consistent with other applicable state and federal laws. Money accepted from any cooperator or person  
1312 shall be deposited to a special nuisance bird fund to be expended in the enforcement of this chapter.

1313 CHAPTER 10.

1314 ENDANGERED PLANT AND INSECT SPECIES.

1315 § 3.2-1000. Definitions.

1316 As used in this chapter, unless the context requires a different meaning:

1317 "Candidate species" means those species formally recommended by the Director of the Department of  
1318 Conservation and Recreation or other reliable data sources in writing to and accepted by the  
1319 Commissioner for presentation to the Board for listing under this chapter.

1320 "Endangered species" means any species or variety of plant life or insect life determined by the  
1321 Board to be in danger of extinction throughout all or a significant part of its range other than a species  
1322 determined by the Commissioner not to be in the best interest of the welfare of man.

1323 "Insect" or "insect life" means any species of the class Insecta.

1324 "Plant" or "plant life" means any member of the plant kingdom, including spores, leaves, stems,  
1325 branches, flowers, seeds, roots, and other parts or products thereof.

1326 "Proposed species" means any candidate species authorized by the Board for consideration for  
1327 listing as threatened or endangered under the provisions of this chapter.

1328 "Species" includes any species or variety of plant life or insects.

1329 "Take" means, in reference to plants and insects, to collect, pick, cut, or dig up for the purpose of  
1330 resale.

1331 "Threatened species" means any species determined by the Board to be likely to become an  
1332 endangered species within the foreseeable future throughout all or a significant portion of its native  
1333 range.

1334 § 3.2-1001. Powers and duties of Commissioner.

1335 For the purpose of effectively administering this chapter, the Commissioner may:

1336 1. Establish programs as are deemed necessary for the management of threatened or endangered  
1337 species.

1338 2. Accept funds for a special account or other gifts or grants from any source for use in the  
1339 furtherance of this chapter. Funds collected for services on articles determined by the Commissioner to  
1340 be beyond the scope of this chapter shall revert to the fund from which expended.

1341 3. Enter into reciprocal agreements with responsible officers of other states under which any part of  
1342 this chapter would benefit.

1343 4. Issue a permit authorizing the removal, taking, or destruction of threatened or endangered species  
1344 on the state list upon good cause shown and where necessary to alleviate damage to property, the  
1345 impact on progressive development, or protect human health, provided that such action does not violate  
1346 federal laws or regulations.

1347 5. Stop sale, seize, or return to point of origin at the owner's expense, any threatened or endangered  
1348 species or part thereof if the Commissioner determines the owner has violated any of the provisions of  
1349 this chapter or the regulations adopted hereunder. Any threatened or endangered species or part thereof  
1350 seized may be disposed of at the discretion of the Commissioner.

1351 6. *Seek, in those situations where permission to enter property is denied by the owner or occupant,*  
 1352 *an administrative inspection warrant signed by any judge of any circuit court whose territorial*  
 1353 *jurisdiction encompasses the property to be inspected, authorizing the Commissioner to make inspections*  
 1354 *or develop other biological data for the proper management of any threatened or endangered species.*  
 1355 *The issuance of an administrative inspection warrant pursuant hereto shall conform, insofar as is*  
 1356 *practicable, to the requirements and guidelines set forth in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2*  
 1357 *relating to the issuance of inspection warrants in connection with the manufacturing or emitting of a*  
 1358 *toxic substance.*

1359 § 3.2-1002. *Listing of threatened and endangered species; powers of Board; further powers of*  
 1360 *Commissioner.*

1361 A. *The Board may adopt regulations including the listing of threatened or endangered species, their*  
 1362 *taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or*  
 1363 *any other need in furtherance of the purposes of this chapter.*

1364 B. *The Commissioner may conduct investigations of species of plants and insects to develop*  
 1365 *information relating to the population, distribution, habitat needs, limiting factors, and other biological*  
 1366 *and ecological data in order to determine management measures necessary to assure their continued*  
 1367 *ability to sustain themselves successfully. As a result of this investigation and recommendations received*  
 1368 *regarding candidate species from the Director of the Department of Conservation and Recreation and*  
 1369 *from other reliable data, the Board shall approve proposed species to be added to or deleted from the*  
 1370 *list of threatened species or the list of endangered species, or to be transferred from one list to the*  
 1371 *other.*

1372 § 3.2-1003. *Threatened and endangered species; prohibitions.*

1373 A. *It shall be unlawful for any person to dig, take, cut, process, or otherwise collect, remove,*  
 1374 *transport, possess, sell, offer for sale, or give away any species native to or occurring in the wild in the*  
 1375 *Commonwealth that are listed in this chapter or the regulations adopted hereunder as threatened or*  
 1376 *endangered, other than from such person's own land, except in accordance with the provisions of this*  
 1377 *chapter or the regulations adopted hereunder.*

1378 B. *The Commissioner may require any person possessing endangered species or parts thereof to*  
 1379 *present such species or parts thereof for inspection and to give full information as to their origin and*  
 1380 *destination.*

1381 § 3.2-1004. *When Commissioner may permit taking of threatened or endangered species.*

1382 *The Commissioner may issue a permit under certain circumstances for the taking, possessing, buying,*  
 1383 *selling, transporting, exporting, or shipping of any threatened or endangered species that appear on the*  
 1384 *state list of threatened or endangered species for scientific, biological, or educational purposes or for*  
 1385 *propagation to ensure their survival, provided that such action does not violate federal laws or*  
 1386 *regulations.*

1387 § 3.2-1005. *Harvesting of threatened species; further powers of Board and Commissioner.*

1388 A. *The Board may adopt regulations to permit and control the commercial harvest of certain*  
 1389 *threatened species that would prevent that species from becoming endangered or extinct.*

1390 B. *The Commissioner may permit the taking of a threatened species when the Board has determined*  
 1391 *that its abundance in the Commonwealth justifies a controlled harvest that is not in violation of federal*  
 1392 *laws or regulations. The Commissioner shall take the necessary action to conserve, protect, restore, or*  
 1393 *propagate threatened and endangered species.*

1394 § 3.2-1006. *License required to buy threatened species; records of purchases.*

1395 A. *It shall be unlawful for any person to buy any threatened species or part thereof, which is listed*  
 1396 *in this chapter or regulations adopted hereunder, without first obtaining a license to do so from the*  
 1397 *Commissioner. This section shall not apply to the purchase or sale of real property upon which such*  
 1398 *threatened species or part thereof may be located. Application forms shall be provided by the*  
 1399 *Commissioner and shall be completed and returned with a fee of \$10 made payable to the Treasurer of*  
 1400 *Virginia. Licenses shall expire on December 31 annually and there shall be no abatement in the annual*  
 1401 *fee. Licenses may be revoked at any time by the Commissioner for good cause.*

1402 B. *The buyer of any threatened species or part thereof shall maintain and keep records of all*  
 1403 *purchases for the preceding 12 months on forms prescribed by the Commissioner. Records shall be sent*  
 1404 *or otherwise provided to the Commissioner within 30 days following the expiration of the license.*  
 1405 *Records shall be made available to the Commissioner during normal business hours for examination or*  
 1406 *information.*

1407 § 3.2-1007. *Wild ginseng declared threatened plant species.*

1408 *The indigenous plant, Panax quinquefolius L., of the Araliaceae family, commonly referred to as*  
 1409 *ginseng, is hereby declared a threatened plant species when it occurs in the wild. All persons buying*  
 1410 *wild ginseng or otherwise accepting this plant or part thereof for resale shall be licensed to do so and*  
 1411 *shall acquire wild ginseng or parts thereof in accordance with the provisions of this chapter and the*

1412 regulations adopted hereunder. The wild ginseng harvest season shall be set by the Board. If any person  
 1413 takes wild ginseng, other than from his own land, on any other date it shall be deemed a violation of  
 1414 this chapter.

1415 § 3.2-1008. Export certificate required for export of ginseng.

1416 All persons who have ginseng either wild or artificially propagated in any quantity and who wish to  
 1417 export any amount out of the Commonwealth shall obtain an export certificate from the Department.  
 1418 This section shall not apply to persons exporting ginseng for personal or individual use in quantities not  
 1419 exceeding eight ounces in any calendar year. To obtain an export certificate, an individual shall keep  
 1420 accurate records of the year of harvest and the county of origin of the ginseng. In the case of dealers, a  
 1421 person shall keep accurate records of purchases, quantity purchased, whether the ginseng was wild or  
 1422 cultivated, county of origin, and the name of the seller. Such records shall be presented to the  
 1423 Commissioner for inspection.

1424 § 3.2-1009. Virginia birch declared endangered species.

1425 Virginia birch or round-leaf birch, *Betula uber* of the *Betulaceae* family, is hereby declared an  
 1426 endangered species as defined herein and is subject to the provisions of this chapter to preserve those  
 1427 specimens known to occur in the Commonwealth.

1428 § 3.2-1010. Enforcement of chapter; summons.

1429 Any conservation police officer or law-enforcement officer as defined in § 9.1-101, excluding certain  
 1430 Alcoholic Beverage Control Board members, may enforce the provisions of this chapter and the  
 1431 regulations adopted hereunder as well as those who are so designated by the Commissioner. Those  
 1432 designated by the Commissioner may issue a summons to any person who violates any provision of this  
 1433 chapter to appear at a time and place to be specified in such summons.

1434 § 3.2-1011. Penalty.

1435 Any person who violates any provision of this chapter or the regulations adopted hereunder is guilty  
 1436 of a Class 1 misdemeanor.

## 1437 SUBTITLE II.

### 1438 BOARDS, COUNCILS, FOUNDATIONS, AND COMMISSIONS.

#### 1439 Part A. General Provisions.

#### 1440 CHAPTER 11.

#### 1441 GENERAL PROVISIONS.

1442 § 3.2-1100. Diversion of dedicated revenues.

1443 A. The unexpended balances of the following special funds shall not be diverted or expended for any  
 1444 purpose other than each fund's intended purpose unless authorized by a specific act of Assembly. The  
 1445 special funds are:

- 1446 1. Apple Fund (§ 3.2-1206);
- 1447 2. Peanut Fund (§ 3.2-1906);
- 1448 3. Plant Pollination Fund (§ 3.2-2806);
- 1449 4. Virginia Agricultural Foundation Fund (§ 3.2-2905);
- 1450 5. Virginia Bright Flue-Cured Tobacco Promotion Fund (§ 3.2-2407);
- 1451 6. Virginia Cattle Industry Fund (§ 3.2-1305);
- 1452 7. Virginia Corn Fund (§ 3.2-1411);
- 1453 8. Virginia Cotton Fund (§ 3.2-1511);
- 1454 9. Virginia Dark-Fired Tobacco Promotion Fund (§ 3.2-2506);
- 1455 10. Virginia Egg Fund (§ 3.2-1605);
- 1456 11. Virginia Horse Industry Promotion and Development Fund (§ 3.2-1704);
- 1457 12. Virginia Marine Products Fund (§ 3.2-2705);
- 1458 13. Virginia Milk Commission (§ 3.2-3220);
- 1459 14. Virginia Pork Industry Fund (§ 3.2-2005);
- 1460 15. Virginia Potato Fund (§ 3.2-1810);
- 1461 16. Virginia Sheep Industry Promotion and Development Fund (§ 3.2-2111);
- 1462 17. Virginia Small Grains Fund (§ 3.2-2211);
- 1463 18. Virginia Soybean Fund (§ 3.2-2311); and
- 1464 19. Virginia Wine Promotion Fund (§ 3.2-3005).

1465 B. No provision of this subtitle shall be construed to give any board the authority to expend funds  
 1466 for legislative or political activity.

1467 § 3.2-1101. Commodity boards reporting requirements.

1468 All commodity boards established within the Department shall report their activities to the Board on  
 1469 an annual basis. This report shall be in a format as prescribed by the Board. The Board may review  
 1470 activities of the commodity boards and make such recommendations concerning their programs as it  
 1471 deems fit.

1472 § 3.2-1102. Collection of delinquent assessments; civil action.

1473 Except as provided in §§ 3.2-1721, 3.2-1812, 3.2-2408, and 3.2-2509, the Tax Commissioner shall



1474 immediately notify any person who fails to pay an assessment pursuant to Part B of this subtitle and  
 1475 shall add a five percent penalty to the amount due. If such deficiency is not paid within 30 days after  
 1476 the date of such notice, then the amount of the deficiency shall bear interest, in accordance with  
 1477 § 58.1-15, from the date the amount was due, and the Tax Commissioner shall collect any interest as  
 1478 part of the delinquent amount. If any person is delinquent in any payment of the money due or interest  
 1479 thereon, then the amount shall be collected by civil action in the name of the Commonwealth at the  
 1480 direction of the Tax Commissioner, and any person adjudged to be in default shall pay the cost of such  
 1481 action. The Attorney General, at the request of the Tax Commissioner, shall institute action in an  
 1482 appropriate court for the collection of any money due under Part B of this subtitle, including interest  
 1483 thereon. The Tax Commissioner may waive or remit such penalty, or portion thereof, in his discretion  
 1484 for good cause shown.

1485 § 3.2-1103. Duty of law enforcement officers.

1486 It shall be the duty of all state and local law-enforcement officers to assist in the enforcement of this  
 1487 subtitle.

1488 Part B. Commodity Boards.

1489 CHAPTER 12.

1490 APPLE BOARD.

1491 § 3.2-1200. Definitions.

1492 As used in this chapter, unless the context requires a different meaning:

1493 "District" means one of the districts set forth in § 3.2-1205.

1494 "Member" means a member of the Apple Board.

1495 "Producer" means any person who, in a calendar year, grows or causes to be grown within the  
 1496 Commonwealth, for sale, a minimum of 5,000 tree run bushels of apples.

1497 "Tree run bushel" means a container, with a content of not less than 2,140 cubic inches or more  
 1498 than 2,500 cubic inches, of apples that have not yet been graded or sized.

1499 § 3.2-1201. Apple Board; composition and appointment of members.

1500 A. The Apple Board is continued within the Department. The Apple Board shall consist of nine  
 1501 members, with three members representing each district. Each member shall be a citizen of the  
 1502 Commonwealth and engaged in producing apples in the Commonwealth with a majority of his apple  
 1503 production occurring in the district he represents.

1504 B. The Commissioner shall hold a special election in each district to elect each member of the Apple  
 1505 Board. The special election shall be held by secret ballot at least 30 days but not more than 90 days  
 1506 before the expiration of the term of office of any member. The Commissioner shall appoint the candidate  
 1507 receiving the highest number of votes in the special election as a member. The Apple Board may adopt  
 1508 and enforce regulations governing the conduct of special elections and voting therein. Such regulations  
 1509 shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. A producer shall  
 1510 be eligible to vote only in the district where the majority of his apple production occurs.

1511 § 3.2-1202. Apple Board membership terms.

1512 The terms for appointments to the Apple Board shall be for three years.

1513 If a vacancy occurs before the expiration of any term of office, the Commissioner shall fill such  
 1514 vacancy within 30 days after the vacancy by a special election held to elect a member for the unexpired  
 1515 term.

1516 § 3.2-1203. Apple Board officers and compensation.

1517 The Apple Board shall elect one of its members as chairman and such other officers as deemed  
 1518 appropriate. Members of the Apple Board shall serve without compensation, but may be reimbursed for  
 1519 actual expenses incurred in attending meetings of the Apple Board.

1520 § 3.2-1204. Powers and duties of Apple Board; report.

1521 A. The Apple Board may:

1522 1. Administer, manage and make expenditures from the Apple Fund;

1523 2. Plan and conduct campaigns of research, education, publicity, and industry development for the  
 1524 purpose of enhancing the viability and profitability of the Virginia apple industry;

1525 3. Make contracts to accomplish the purposes of this chapter;

1526 4. Cooperate with other state, regional, national, and international organizations in research  
 1527 concerning education on promotion of apples, and expend moneys of the Apple Fund for such purposes;

1528 5. Establish committees of the Apple Board to address horticultural and such other issues as the  
 1529 Apple Board deems pertinent to the Virginia apple industry; and

1530 6. Do whatever else may be necessary to effectuate the purposes of this chapter.

1531 B. The chairman shall make a report at least annually, furnishing Apple Board members with a  
 1532 statement of total receipts and disbursements of the Apple Board for the year. The chairman shall  
 1533 annually file with the Commissioner a copy of the report and audit that is required under the Apple  
 1534 Fund.

- 1535 § 3.2-1205. *Commercial apple-producing districts designated.*  
 1536 *The commercial apple-producing districts of the Commonwealth are as follows:*  
 1537 *Area I. Northern Virginia District - Clarke, Fairfax, Frederick, and Loudoun Counties, and the City*  
 1538 *of Winchester.*  
 1539 *Area II. Central Virginia District - Accomack, Fauquier, King William, Lancaster, Madison,*  
 1540 *Middlesex, Northampton, Northumberland, Orange, Page, Rappahannock, Richmond, Rockingham,*  
 1541 *Shenandoah, Warren, and Westmoreland Counties.*  
 1542 *Area III. Southern Virginia District - Albemarle, Amherst, Augusta, Bedford, Botetourt, Buckingham,*  
 1543 *Carroll, Charlotte, Dickenson, Franklin, Floyd, Giles, Grayson, Halifax, Hanover, Henry, Isle of Wight,*  
 1544 *James City, Lee, Louisa, Lunenburg, Montgomery, Nelson, Nottoway, Patrick, Pittsylvania, Prince*  
 1545 *Edward, Pulaski, Roanoke, Rockbridge, Russell, Smyth, Southampton, Surry, Wise, and Wythe Counties.*  
 1546 *Whenever the commercial production of apples begins in any locality not included above, such*  
 1547 *locality shall become a part of the nearest district that has the lowest commercial apple production*  
 1548 *according to production records of the Department.*  
 1549 § 3.2-1206. *Apple Fund established.*  
 1550 *There is hereby created in the state treasury a special nonreverting fund to be known as the Apple*  
 1551 *Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the*  
 1552 *Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the*  
 1553 *state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the*  
 1554 *Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of*  
 1555 *each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund*  
 1556 *shall be used solely for the purposes of administration and enforcement of this chapter, including the*  
 1557 *payment for personal services and expenses of agents of the Apple Board and the payment of rent,*  
 1558 *services, materials, and supplies necessary to effectuate the purposes and objects of this chapter, or as*  
 1559 *specifically provided in any referendum ratified pursuant to this chapter. Expenditures and*  
 1560 *disbursements from the Fund shall be made by the Apple Board on warrants issued by the Comptroller*  
 1561 *upon written request signed by a duly authorized officer of the Apple Board. The Auditor of Public*  
 1562 *Accounts shall audit all the accounts of the Apple Board as provided for in § 30-133.*  
 1563 § 3.2-1207. *Bond of employees.*  
 1564 *All employees of the Apple Board handling money under this chapter shall be required to furnish*  
 1565 *surety bonds.*  
 1566 § 3.2-1208. *Referendum on question of levying apple excise tax.*  
 1567 *The Board shall authorize the holding of a referendum as set forth in this article. The Commissioner*  
 1568 *shall be fully empowered and directed to hold and conduct a referendum on the question of whether or*  
 1569 *not the producers of apples in the Commonwealth are willing to pay an excise tax on apples to support*  
 1570 *additional research, education, publicity, and industry development of the apple industry. The amount of*  
 1571 *tax to be voted upon in the referendum shall be 2.5 (\$0.025) cents per tree run bushel of apples grown*  
 1572 *by producers in the Commonwealth. The cost of conducting a referendum under this section shall be*  
 1573 *paid by the Virginia State Horticultural Society.*  
 1574 § 3.2-1209. *Management of referenda; Commissioner's duties; notice.*  
 1575 *A. The Commissioner shall, under the regulations adopted by the Board pursuant to § 3.2-112,*  
 1576 *arrange for the use of any polling places if necessary.*  
 1577 *B. The Commissioner shall, at least 60 days before the date on which a referendum is to be held,*  
 1578 *mail notice to the clerk of the circuit court in each locality where apples are produced. The clerk of the*  
 1579 *court shall post the notice on the front door or public bulletin board of the courthouse and certify the*  
 1580 *posting to the Commissioner. The Commissioner shall, at least 60 days prior to the holding of any*  
 1581 *referendum under this article, publish notice of the referendum in a newspaper of daily general*  
 1582 *circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general*  
 1583 *circulation in each locality where apples are produced.*  
 1584 *The notice shall contain the date, hours, voting places, and method of voting in the referendum; the*  
 1585 *amount of assessment to be collected, the means by which the assessment will be collected, and the*  
 1586 *general purposes for which the assessment will be used; and the regulations adopted by the Board*  
 1587 *pursuant to § 3.2-112.*  
 1588 *C. The Commissioner shall prepare and distribute in advance of the referendum all necessary*  
 1589 *ballots, certificates, and supplies required for the referendum.*  
 1590 *D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the*  
 1591 *results thereof and certify the same to the Governor and shall notify, by mail, each member of the*  
 1592 *Board of the results.*  
 1593 § 3.2-1210. *Questions to be printed on ballots.*  
 1594 *The question to be printed on the ballots used in the referendum held under § 3.2-1208, shall be:*  
 1595 *"Do you favor the levy of an excise tax of 2.5 (\$0.025) cents per tree run bushel of ungraded apples*  
 1596 *grown in the Commonwealth for sale by producers of at least 5,000 tree run bushels per calendar year,*

1597 to be paid into the Apple Fund and distributed as follows: up to 40 percent paid to the U.S. Apple  
 1598 Association for publicity and industry development; up to 20 percent paid to the Virginia State  
 1599 Horticultural Society for education and industry development; up to 20 percent paid to the Virginia  
 1600 Apple Research Program for research; up to 10 percent to be used for administration of this article;  
 1601 and up to 10 percent to be held in the Apple Fund as a reserve with: (i) a maximum amount of  
 1602 \$125,000; and (ii) a requirement that any appropriation from the reserve receive at least two-thirds of  
 1603 the votes of the members of the Apple Board? If the maximum amount of the reserve fund is met, then  
 1604 the amount of that 10 percent distribution that exceeds the reserve fund shall be divided equally among  
 1605 the U.S. Apple Association, the Virginia State Horticultural Society, and the Virginia Apple Research  
 1606 Program.

1607 \_\_\_\_\_ Yes

1608 \_\_\_\_\_ No."

1609 § 3.2-1211. Persons eligible to vote.

1610 Any producer in the year preceding the date of the referendum held pursuant to this article shall be  
 1611 eligible to vote in such referendum if he so certifies on forms approved by the Commissioner. Any  
 1612 person who meets these requirements shall be eligible to vote in the referendum, but no person shall be  
 1613 required to be a qualified voter in any other respect. Such person may vote provided that he is a  
 1614 resident of the Commonwealth or qualified to do business in the Commonwealth. Any person who is not  
 1615 an individual shall vote by its authorized representative.

1616 § 3.2-1212. Referenda results; action of Governor.

1617 If the Governor finds the referendum in order and that more than one-half of those voting are in  
 1618 favor of the excise tax on apples pursuant to § 3.2-1210, then the Governor shall so proclaim. Upon  
 1619 such proclamation by the Governor, the excise tax on apples shall be established. If the Governor finds  
 1620 that more than one-half of those voting are in opposition to the excise tax on apples pursuant to  
 1621 § 3.2-1210, then the Governor shall not so proclaim and the excise tax on apples shall not be  
 1622 established.

1623 § 3.2-1213. Referenda.

1624 The Board, upon petition by at least 10 percent of the producers in the Commonwealth as  
 1625 determined by the Commissioner, shall provide for a referendum on the continuation of the Apple Board  
 1626 or amending the excise tax on apples if established pursuant to § 3.2-1208. The Board shall not act on  
 1627 such a petition for conducting a referendum until at least five years have passed since the last  
 1628 referendum. Any referendum held under this section shall be conducted in accordance with this chapter.

1629 § 3.2-1214. Referenda results; action of Governor.

1630 If the Governor finds any referenda held pursuant to this article in order and that more than  
 1631 one-half of those voting are in opposition to the continuation of the Apple Board, then the Governor  
 1632 shall so proclaim and upon such proclamation the Apple Board shall be discontinued. If the Governor  
 1633 finds that more than one-half of those voting are in favor of the continuation of the Apple Board, then  
 1634 the Governor shall not so proclaim and the Apple Board shall continue.

1635 If the Governor finds that more than one-half of those voting are in favor of amending the excise tax  
 1636 on apples, then he shall so proclaim and upon such proclamation the excise tax shall be amended as  
 1637 stated in the referendum. If the Governor finds that more than one-half of those voting are in opposition  
 1638 to amending the excise tax on apples, then he shall not so proclaim and the excise tax on apples shall  
 1639 not be amended.

1640 § 3.2-1215. Disposition of excise tax by producer; reports.

1641 A. Every producer shall submit to the Tax Commissioner the excise tax levied on apples grown in the  
 1642 Commonwealth in a calendar year by January 31 of the following year. The Tax Commissioner shall  
 1643 promptly pay the assessments into the Virginia state treasury to the credit of the Apple Fund.

1644 B. Every producer shall complete reports on forms furnished by the Tax Commissioner, submit such  
 1645 reports to the Tax Commissioner along with the excise tax submitted pursuant to subsection A, and keep  
 1646 copies of the reports for a period of not less than three years from the time the report was produced.  
 1647 Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner shall provide to the  
 1648 Apple Board or the Commissioner copies of reports submitted pursuant to this section.

1649 § 3.2-1216. Records to be kept by producer.

1650 Every producer shall maintain a complete record of the apples grown by him and shall preserve the  
 1651 records for at least three years from the time such apples are grown. The records shall be established  
 1652 and maintained as required by the Tax Commissioner and shall be open to the inspection of the Tax  
 1653 Commissioner.

1654 § 3.2-1217. Falsification of records; misdemeanor.

1655 It is a Class 1 misdemeanor:

1656 1. For any producer to fail to submit to the Tax Commissioner any report required under this article  
 1657 within 60 days after the time such report is required to be submitted.

1658 2. For any producer knowingly to report falsely to the Tax Commissioner any information required  
1659 under this article.

1660 3. For any producer to fail to keep a complete record of the apples grown by him or to not preserve  
1661 such records for a period of at least three years from the time such apples are grown.

1662 CHAPTER 13.

1663 CATTLE INDUSTRY BOARD.

1664 § 3.2-1300. Definitions.

1665 As used in this chapter, unless the context requires a different meaning:

1666 "Cattle" means beef cattle sold for slaughter or feeding purposes, veal calves sold for slaughter or  
1667 feeding purposes, and dairy cattle sold for immediate slaughter providing such animals are sold for a  
1668 consideration in excess of \$20 per head in the Commonwealth.

1669 "Handler" means, at the point where the cattle are weighed or traded and the value determined,  
1670 operators of all stockyards, livestock dealerships, slaughterhouses, packing plants, and livestock auction  
1671 markets or any other person that purchases from a producer.

1672 "Processor" or "packer" means any person that slaughters cattle.

1673 "Producer" means any person engaged in the business of raising cattle, or selling dairy cattle for  
1674 slaughter.

1675 § 3.2-1301. Cattle Industry Board; composition and appointment of members.

1676 A. The Cattle Industry Board, established by the passage of a referendum held pursuant to Chapter  
1677 375 of the 1983 Acts of Assembly, is continued within the Department.

1678 The Cattle Industry Board shall be composed of 15 members, each of whom shall be a citizen of the  
1679 United States and a resident of the Commonwealth. Each member shall have been actively engaged in  
1680 the type of production or business that he will represent on the Cattle Industry Board for at least five  
1681 years, shall derive a substantial proportion of his income from such production or business, and shall  
1682 continue to be actively engaged in such production or business during his term.

1683 B. The Governor shall appoint the members, who represent the various segments of the industry as  
1684 follows:

1685 1. Seven commercial beef cattle producers, one from each feeder cattle production area of the  
1686 Commonwealth. The seven areas shall be designated by the Virginia Cattlemen's Association in general  
1687 accordance with feeder cattle marketing practices.

1688 2. Two dairymen.

1689 3. One commercial cattle feeder.

1690 4. Two purebred beef cattle breeders.

1691 5. Two livestock market operators.

1692 6. One meat packer or processor.

1693 C. Such appointments shall be chosen from the following recommendations made through the  
1694 Commissioner:

1695 1. Each of the seven beef cattle producing areas shall recommend two producers to the Virginia  
1696 Cattlemen's Association. The Virginia Cattlemen's Association shall recommend these 14 commercial  
1697 beef cattle producers (two from each area), and at least one representative from each feeder cattle  
1698 production area of the Commonwealth shall be appointed to the Cattle Industry Board.

1699 2. The Virginia Cattle Feeders Association shall recommend two commercial cattle feeders.

1700 3. The Virginia State Dairymen's Association shall recommend four dairymen.

1701 4. The Beef Cattle Improvement Association shall recommend four purebred beef cattle breeders,  
1702 provided that not more than one be nominated from each of the four predominant breeder associations.

1703 5. The Virginia Association of Livestock Market Operators shall recommend four livestock market  
1704 operators.

1705 6. The Virginia Cattlemen's Association shall recommend two persons, each of whom shall be either  
1706 a processor or a packer.

1707 § 3.2-1302. Cattle Industry Board membership terms.

1708 A. The terms for appointments to the Cattle Industry Board shall be for four years, except  
1709 appointments to fill vacancies, which shall be for the unexpired terms. No Cattle Industry Board member  
1710 may serve more than two consecutive full terms. Whenever a new appointment is made, the person  
1711 receiving the appointment shall be a representative of the same segment of the industry as his  
1712 predecessor and nominated as before.

1713 B. The Governor shall immediately declare the office of any member of the Cattle Industry Board  
1714 vacant when he finds that the member no longer is actively engaged in the type of beef or dairy  
1715 production or business he was engaged in at the time of his appointment; is no longer a resident of the  
1716 Commonwealth; or is unable to perform the duties of his office.

1717 § 3.2-1303. Cattle Industry Board officers and compensation.

1718 A. The Cattle Industry Board shall elect a chairman and such other officers as deemed appropriate  
1719 who may or may not be from among its members. The Cattle Industry Board shall meet each six months

1720 *and at such other times as called by the chairman. The chairman may call special meetings at any time*  
 1721 *and shall call a special meeting when requested by five or more members of the Cattle Industry Board.*

1722 *B. Members shall serve without compensation but shall be reimbursed for actual expenses incurred*  
 1723 *in attending meetings of the Cattle Industry Board.*

1724 *§ 3.2-1304. Powers and duties of Cattle Industry Board.*

1725 *A. The Cattle Industry Board may improve cattle industry markets through activities to develop,*  
 1726 *maintain, and expand the state, national, and foreign markets for cattle, beef, veal, and their products*  
 1727 *produced, processed, or manufactured in the Commonwealth.*

1728 *B. The Cattle Industry Board may formulate and effectuate, directly or in cooperation with other*  
 1729 *agencies and instrumentalities specified in this chapter, sales stimulation and consumer or other*  
 1730 *educational programs designed to increase the use and consumption of beef, veal, and their products.*

1731 *C. The Cattle Industry Board shall engage in the research, education, and promotion of the use and*  
 1732 *sale of beef and beef products, and shall have the following powers and duties:*

1733 *1. To enter into contracts as the Cattle Industry Board deems necessary for the experimental*  
 1734 *development of new or improved markets or marketing methods.*

1735 *2. To conduct or contract for scientific research and services to discover and develop the commercial*  
 1736 *value of beef and veal and their products.*

1737 *3. To make grants to research agencies for financing special or emergency studies or for the*  
 1738 *purchase or acquisition of facilities necessary to carry out research in keeping with the intent of this*  
 1739 *chapter.*

1740 *4. To disseminate reliable information founded upon the research conducted under this chapter and*  
 1741 *other sources, showing the uses of beef, veal, and their products.*

1742 *5. To cooperate with any local, state, or national organization or agency engaged in work or*  
 1743 *activities similar to that of the Cattle Industry Board and enter into contracts with such organizations or*  
 1744 *agencies for carrying on joint programs.*

1745 *6. To act jointly and in cooperation with the federal and state governments, or any agency thereof in*  
 1746 *the administration of any program of the government or governmental agency deemed by the Cattle*  
 1747 *Industry Board as beneficial to the production, marketing, or promotion of the beef and veal industry of*  
 1748 *the Commonwealth and expend funds in connection with such programs provided they are compatible*  
 1749 *with this chapter.*

1750 *7. To enter into contracts that it deems appropriate to the carrying out of the purposes of the Cattle*  
 1751 *Industry Board as authorized by this chapter.*

1752 *8. To study and inform producers concerning state and federal legislation with respect to tariffs,*  
 1753 *duties, reciprocal trade agreements, import quotas, and other matters concerning the beef and veal*  
 1754 *industry.*

1755 *9. To borrow money not in excess of estimates of its revenue from the current year's tax.*

1756 *10. To appoint subordinate officers and employees of the Cattle Industry Board and prescribe their*  
 1757 *duties and fix their compensation within the limitations of the Virginia Personnel Act (§ 2.2-2900 et*  
 1758 *seq.).*

1759 *11. To acquire and maintain such office space and equipment as necessary to carry out the duties of*  
 1760 *the Cattle Industry Board.*

1761 *12. From the tax revenues it receives, to contract with organizations, including the National*  
 1762 *Livestock and Meat Board, to carry out work and programs, approved by the Cattle Industry Board, on*  
 1763 *a national basis.*

1764 *D. The Cattle Industry Board shall establish a meeting place anywhere within the Commonwealth,*  
 1765 *but the selection of the location shall be guided by consideration for the convenience of the majority of*  
 1766 *those most likely to have business with the Cattle Industry Board or to be affected by this chapter.*

1767 *E. The Cattle Industry Board may adopt regulations necessary to carry out the purpose of this*  
 1768 *chapter.*

1769 *F. An annual report shall be made by the Cattle Industry Board to the Commissioner and shall be*  
 1770 *published as a public record to include a statement on receipts and itemized disbursements of the*  
 1771 *Virginia Cattle Industry Fund.*

1772 *§ 3.2-1305. Virginia Cattle Industry Fund established.*

1773 *There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia*  
 1774 *Cattle Industry Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books*  
 1775 *of the Comptroller. All funds collected pursuant to § 3.2-1306 shall be paid into the state treasury and*  
 1776 *credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each*  
 1777 *fiscal year shall not revert to the general fund but shall remain in the Fund.*

1778 *All moneys credited to the Fund shall be used exclusively as set forth in this chapter. The Auditor of*  
 1779 *Public Accounts shall audit all the accounts of the Cattle Industry Board as is provided for in § 30-133.*  
 1780 *Expenditures and disbursements from the Fund shall be made by the Cattle Industry Board on warrants*

1781 issued by the Comptroller upon written request signed by a duly authorized officer of the Cattle Industry  
1782 Board.

1783 § 3.2-1306. Collection and disposition of assessment by handler; reports.

1784 A. Every handler shall deduct 25 cents (\$0.25) per head from the proceeds of sale owed by him to  
1785 the respective owners of all cattle and calves when sold in the Commonwealth, with the exception of  
1786 dairy cows going back to farms for milk production and those animals selling for less than \$20 per  
1787 head. The handler shall remit such assessments to the Tax Commissioner on or before the last day of  
1788 the month following the end of each calendar quarter.

1789 B. Every handler shall complete reports on forms furnished by the Tax Commissioner and submit  
1790 such reports to the Tax Commissioner along with the assessments collected pursuant to subsection A.  
1791 Each report shall include a statement of the number of cattle handled and the amount of money  
1792 collected, and any other information deemed necessary by the Tax Commissioner to carry out his  
1793 functions. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner is authorized  
1794 to provide the Cattle Industry Board with a list of taxpayers and amounts paid.

1795 C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

1796 § 3.2-1307. Records to be kept by handler.

1797 Every handler shall keep a complete record of the number of cattle subject to payment bought by  
1798 him for a period of not less than three years. Such record shall be open for inspection by the Tax  
1799 Commissioner, and shall be established and maintained as required by the Tax Commissioner.

1800 § 3.2-1308. Falsification of records; misdemeanor.

1801 It is a Class 1 misdemeanor:

1802 1. For any first handler to fail to submit to the Tax Commissioner any statement or report required  
1803 in this chapter within 60 days from the time such statement or report is required to be submitted.

1804 2. For any first handler knowingly to report falsely to the Tax Commissioner the number of taxable  
1805 cattle handled by him during any period or to falsify the records.

1806 CHAPTER 14.  
1807 CORN BOARD.

1808 § 3.2-1400. Definitions.

1809 As used in this chapter, unless the context requires a different meaning:

1810 "Corn" means all corn sold except sugar corn, popcorn, and ornamental corn.

1811 "Country buyer" means any person who buys corn from a producer.

1812 "Exporter" means any person offering corn for export sale.

1813 "Handler" means any processor, dealer, shipper, country buyer, exporter, or any other business  
1814 entity that purchases corn from a producer. The term shall also mean any person that buys, accepts for  
1815 shipment, or otherwise acquires property in corn from a producer, and includes a mortgagee, pledgee,  
1816 lienor, or other person having a claim against the producer, when the actual or constructive possession  
1817 of corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. The term  
1818 shall also mean a producer who transports and sells his corn outside of the Commonwealth.

1819 "Processor" means any person who changes the physical form or characteristic of corn for the  
1820 purpose of preparing it for sale.

1821 "Producer" means any person who grew corn in the Commonwealth and sold corn during the  
1822 preceding three years.

1823 "Seedsman" means any person who offers corn seeds for sale.

1824 § 3.2-1401. Corn Board; composition and appointment of members.

1825 The Corn Board, established by the passage of a referendum held pursuant to Chapter 395 of the  
1826 1980 Acts of Assembly, is continued within the Department. The Corn Board shall be composed of 11  
1827 members appointed by the Governor and confirmed in accordance with § 2.2-107 from nominations by  
1828 producer organizations representing corn producers. These organizations shall nominate at least two  
1829 producers from each production area of corn as defined in § 3.2-1410. The Governor shall appoint at  
1830 least one producer from each production area and the membership of the Corn Board shall be  
1831 composed of a majority of producers. The Governor shall appoint one member, if available, from each  
1832 of the following classifications: seedsman, processor, country buyer, and exporter.

1833 § 3.2-1402. Corn Board membership terms.

1834 The terms for appointments to the Corn Board shall be three years. The Governor shall fill any  
1835 vacancy occurring before the expiration of any term for the unexpired term. If possible, vacancies shall  
1836 be filled from the production area or classification from which the vacancy occurred from nominations  
1837 as described in § 3.2-1410.

1838 § 3.2-1403. Corn Board officers and compensation.

1839 A. The Corn Board shall elect a chairman and such other officers as deemed appropriate.

1840 B. Members of the Corn Board shall not receive compensation for attendance at meetings of the  
1841 Corn Board, but shall be reimbursed for actual and necessary expenses incurred in the performance of  
1842 their duties.

1843 § 3.2-1404. Powers and duties of Corn Board.

1844 A. The Corn Board shall have charge of the management and expenditure of the Virginia Corn Fund  
1845 established in the state treasury.

1846 B. The Corn Board may expend funds to provide for programs of market development, education,  
1847 publicity, research, and the promotion of the sale and use of corn; to manage the funds so as to  
1848 accumulate a reserve for contingencies; to establish an office and employ such technical, professional,  
1849 and other assistants as may be required; and to contract for market development, publicity, research,  
1850 advertising, and other promotional services.

1851 C. The Corn Board may establish an executive committee and charge it with such powers, duties,  
1852 and functions as is deemed proper.

1853 D. The Corn Board may enter into an agreement with the Federal Commodity Credit Corporation to  
1854 collect the specified assessment on all corn pledged as collateral for a commodity credit corporation  
1855 price support loan or purchase by the Federal Commodity Credit Corporation under its loan or  
1856 purchase programs.

1857 E. The chairman of the Corn Board shall make an annual report to the Corn Board, including a  
1858 statement of the total receipts and disbursements for the year, and shall file a copy of the report with  
1859 the Commissioner.

1860 § 3.2-1405. Referenda.

1861 The Board, upon petition by a group of corn producers representing at least 10 percent of the  
1862 number of the Commonwealth's corn producers as determined by the Commissioner, may provide for a  
1863 referendum on the continuation of the assessment. If the Governor shall determine that a simple  
1864 majority of those voting are not in favor of the assessment, the Board shall hold no new referenda for  
1865 at least one year after the Governor has declared his findings, and then only after receiving a petition  
1866 signed by at least 10 percent of the number of the Commonwealth's corn producers. The cost of  
1867 conducting any such referendum as above prescribed shall come from funds paid into the Virginia Corn  
1868 Fund as defined in § 3.2-1411. The Board shall adopt regulations governing the conduct of referenda  
1869 pursuant to § 3.2-112.

1870 § 3.2-1406. Management of referenda; Commissioner's duties; notice.

1871 A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

1872 B. The Commissioner shall, 60 days before the date upon which a referendum is to be held, mail  
1873 notice to the clerk of the circuit court in each locality where corn is produced. The clerk of the circuit  
1874 court shall post the notice and regulations on the front door or public bulletin board of the courthouse  
1875 and certify the posting to the Commissioner. The Commissioner shall give notice of the referendum in a  
1876 newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a  
1877 newspaper of general circulation in each locality where corn is produced, at least 60 days prior to the  
1878 holding of any referendum under this chapter. The notice shall contain the date, hours, and method of  
1879 voting in such referendum, the amount of assessment to be collected, the means by which such  
1880 assessment shall be collected, the general purposes for which the assessments will be used, and the  
1881 regulations adopted by the Board pursuant to this chapter.

1882 C. The Commissioner shall prepare and distribute in advance of the referendum all necessary  
1883 ballots, certificates, and supplies required for such referendum and shall, under regulations adopted by  
1884 the Board, arrange for the use of polling places, if necessary.

1885 D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the  
1886 results thereof and certify the same to the Governor and the Board.

1887 § 3.2-1407. Question to be printed on ballots.

1888 The question to be printed on the ballots used in a referendum held pursuant to this chapter shall be  
1889 as follows:

1890 "Do you favor additional market development, education, publicity, research, and the promotion of  
1891 the sale and use of corn and the continuation of the levy of an assessment of one cent per bushel in  
1892 accordance with the provisions of the Corn Board law?"

1893 \_ For

1894 \_ Against."

1895 § 3.2-1408. Persons eligible to vote.

1896 Each producer who sold corn in two of the past three years next preceding the date of the  
1897 referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he  
1898 shall so certify sale and point of sale on forms approved by the Board. Any person meeting such  
1899 requirements shall be eligible to vote in the referendum, but no person shall be required to be a  
1900 qualified voter in other respects. Any person who is not an individual shall vote by its authorized  
1901 representative.

1902 § 3.2-1409. Referenda results; action of Governor.

1903 If the Governor finds any referendum in order and that at least a simple majority of those voting are

1904 *in opposition to the continuation of the assessment on corn, he shall so proclaim and upon such*  
 1905 *proclamation the assessment on corn shall be discontinued. If the Governor finds that at least a simple*  
 1906 *majority of those voting are in favor of the continuation of the assessment on corn, the Governor shall*  
 1907 *not so proclaim.*

1908 § 3.2-1410. *Production areas designated.*

1909 *The following production areas are designated for the purposes of this chapter:*

1910 *Area I: the Counties of Accomack, Northampton, and Isle of Wight and the Cities of Suffolk,*  
 1911 *Chesapeake, and Virginia Beach;*

1912 *Area II: the Counties of Southampton, Sussex, Surry, Prince George, Dinwiddie, Greensville, and*  
 1913 *Brunswick;*

1914 *Area III: the Counties of Westmoreland, Northumberland, Richmond, Lancaster, Essex, Middlesex,*  
 1915 *Mathews, King and Queen, Gloucester, King William, New Kent, York, Charles City, and James City*  
 1916 *and the City of Newport News;*

1917 *Area IV: the Counties of Henrico, Hanover, Caroline, King George, Goochland, Louisa,*  
 1918 *Spotsylvania, Stafford, Fluvanna, Orange, Culpeper, Albemarle, Greene, and Madison;*

1919 *Area V: the Counties of Prince William, Fairfax, Fauquier, Loudoun, Rappahannock, Warren,*  
 1920 *Clarke, Page, Shenandoah, and Frederick;*

1921 *Area VI: the Counties of Mecklenburg, Lunenburg, Nottoway, Amelia, Chesterfield, Halifax,*  
 1922 *Charlotte, Prince Edward, Cumberland, Powhatan, Pittsylvania, Campbell, Appomattox, Buckingham,*  
 1923 *Bedford, Amherst, and Nelson; and*

1924 *Area VII: the Counties of Henry, Franklin, Roanoke, Botetourt, Rockbridge, Augusta, Rockingham,*  
 1925 *Patrick, Floyd, Montgomery, Craig, Alleghany, Bath, Highland, Carroll, Pulaski, Giles, Grayson, Wythe,*  
 1926 *Bland, Smyth, Tazewell, Washington, Russell, Buchanan, Scott, Wise, Dickenson, and Lee.*

1927 § 3.2-1411. *Virginia Corn Fund established.*

1928 *There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia*  
 1929 *Corn Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the*  
 1930 *Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the*  
 1931 *state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the*  
 1932 *Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of*  
 1933 *each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund*  
 1934 *shall be used solely for the purposes set forth in this chapter. In carrying out the purposes of this*  
 1935 *chapter, the Corn Board may cooperate with other state, regional, national, and international*  
 1936 *agricultural organizations in market development, education, publicity, research, and the promotion of*  
 1937 *the sale and use of corn. The proceeds from such activities shall be promptly paid into the Virginia*  
 1938 *Corn Fund. The Auditor of Public Accounts shall audit all the accounts of the Corn Board as provided*  
 1939 *for in § 30-133.*

1940 *Expenditures and disbursements from the Fund shall be made by the Corn Board on warrants issued*  
 1941 *by the Comptroller upon written request signed by the duly authorized officer of the Corn Board.*

1942 § 3.2-1412. *Collection and disposition of assessment by handler; reports.*

1943 *A. Every handler shall deduct from payments for corn made to a producer the amount of the*  
 1944 *assessment levied thereon, and shall remit such assessment to the Tax Commissioner pursuant to this*  
 1945 *chapter.*

1946 *B. A report to the Tax Commissioner shall be on forms prescribed and furnished by the Tax*  
 1947 *Commissioner, and shall be a statement of the gross volume of corn handled by the handler and shall*  
 1948 *be filed with the Tax Commissioner covering corn handled during the preceding period, as set forth by*  
 1949 *the Tax Commissioner. The Tax Commissioner shall set forth the filing date or dates for reports and*  
 1950 *assessments and the period to be covered after consultation with the Virginia Grain Producers*  
 1951 *Association and Corn Board. The assessment levied on corn shall be due and payable by the handler on*  
 1952 *the same day as the report is due. The assessment shall be paid to the Tax Commissioner and be*  
 1953 *promptly paid into the state treasury to the credit of the Virginia Corn Fund.*

1954 *C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

1955 § 3.2-1413. *Records to be kept by handlers.*

1956 *Every handler shall keep a complete record of the corn handled by him for a period of not less than*  
 1957 *three years from the time the corn was handled. Such records shall be open to the inspection of the Tax*  
 1958 *Commissioner, and shall be established and maintained as required by the Tax Commissioner.*

1959 § 3.2-1414. *Falsification of records; misdemeanor.*

1960 *It is a Class 1 misdemeanor:*

1961 *1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of corn handled*  
 1962 *by him during any period.*

1963 *2. For any handler to falsify the records of the corn handled by him.*

1964 *3. For any handler to preserve the records of the corn handled by him for less than three years from*  
 1965 *the time such corn was handled.*



CHAPTER 15.  
COTTON BOARD.

1966  
1967  
1968  
1969  
1970  
1971  
1972  
1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026

- § 3.2-1500. *Definitions.*
- As used in this chapter, unless the context requires a different meaning:*
- "Assessment" means moneys to be collected as authorized by this chapter.
- "Bale" means a closely pressed package of ginned cotton that weighs approximately 480 pounds.
- "Cotton" means the field crop of the genus *Gossypium* grown to be further processed into consumable goods.
- "Farming unit" means any sole proprietorship, corporation, or partnership and includes land owned and leased by any such business entity.
- "Gin" means to remove seed and foreign matter from cotton and make it into a bale.
- "Handler" means a commercial enterprise that gins cotton.
- "Producer" means any person who grows, harvests, and sells cotton in Virginia.
- § 3.2-1501. *Cotton Board; composition and appointment of members; quorum.*
- The Cotton Board, established by the passage of a referendum held pursuant to Chapter 873 of the 1997 Acts of Assembly, is continued within the Department. The Cotton Board shall be composed of eight members appointed by the Governor, each of whom shall be a resident of Virginia and a producer in Virginia. The Governor shall be guided in his appointments from nominations made by the following agricultural organizations: (i) the Virginia Cotton Growers Association, Inc.; (ii) the Virginia Farm Bureau Federation; and (iii) any other organization within the Commonwealth that is recognized by the U.S. Department of Agriculture as a certified cotton grower organization representing Virginia producers pursuant to guidelines authorized by the Cotton Research and Promotion Act (7 U.S.C. §§ 2101-2118). Each such agricultural organization may nominate producers from each production area. The Governor shall appoint a producer residing in each such production area. If no producer resides in a particular production area, the Governor shall appoint a qualified producer from any other production area. Five members of the Cotton Board shall constitute a quorum.
- § 3.2-1502. *Cotton Board membership terms.*
- The terms for appointments to the Cotton Board shall be for three years. The Governor shall fill any vacancy occurring before the expiration of any term through appointment of a qualified producer for the unexpired term. If possible, such vacancies shall be filled from the production area from which the vacancy occurred. No person may serve more than two consecutive three-year terms.
- § 3.2-1503. *Cotton Board officers and compensation.*
- A. The Cotton Board shall elect a chairman and such other officers as deemed appropriate.
- B. Members of the Cotton Board shall be reimbursed for all actual expenses incurred in the attendance of meetings of the Cotton Board and any other Cotton Board-related activities as authorized by the Cotton Board.
- § 3.2-1504. *Powers and duties of Cotton Board.*
- A. The Cotton Board shall have charge of the Virginia Cotton Fund established in the Virginia state treasury.
- B. The Cotton Board may expend funds and enter into contracts in order to effectuate the purposes of this chapter.
- C. The Cotton Board may cooperate with other state, regional, national, and international organizations in research concerning, education on, and promotion of cotton and may expend moneys from the Virginia Cotton Fund for such purpose.
- § 3.2-1505. *Referenda.*
- The Board, upon petition by at least 10 percent of the producers in the Commonwealth as determined by the Commissioner, shall provide for either a referendum on the continuation of the Cotton Board and the assessment on cotton by a maximum of \$0.15 per bale. Any referendum held under this section shall be conducted in accordance with this chapter. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.
- § 3.2-1506. *Management of referenda; Commissioner's duties; notice.*
- A. The Commissioner shall, under the regulations adopted by the Board pursuant to § 3.2-112, arrange for the use of any polling places, if necessary.
- B. The Commissioner shall, at least 60 days before the date on which a referendum is to be held, mail notice to the clerk of the circuit court in each locality where cotton is produced. The clerk of the court shall post the notice on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall, at least 60 days prior to the holding of any referendum under this chapter, publish notice of the referendum in a newspaper of daily general circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general circulation in each locality where cotton is produced.
- The notice shall contain the date, hours, voting places, and method of voting in the referendum; the

2027 amount of assessment to be collected, the means by which the assessment will be collected, and the  
 2028 general purposes for how the assessment will be used; and the regulations adopted by the Board  
 2029 pursuant to § 3.2-112.

2030 C. The Commissioner shall prepare and distribute in advance of the referendum all necessary  
 2031 ballots, certificates, and supplies required for the referendum.

2032 D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the  
 2033 results thereof and certify the same to the Governor and shall notify, by mail, each member of the  
 2034 Board of the results.

2035 § 3.2-1507. Questions to be printed on ballots.

2036 A. The question to be printed on the ballots used in a referendum authorized in § 3.2-1505 on the  
 2037 continuation of the Cotton Board shall be:

2038 Do you favor the continuation of the Cotton Board for the purpose of research, education, and  
 2039 promotion of the growth and use of cotton?

2040 B. The question to be printed on the ballots used in a referendum authorized in § 3.2-1505 on  
 2041 allowing the Cotton Board to increase the assessment on cotton by a maximum of \$0.15 per bale of  
 2042 cotton shall be:

2043 Do you favor authorizing the Cotton Board to increase the assessment on cotton by a maximum of  
 2044 \$0.15 per bale of cotton ginned in the Commonwealth to support research, education, and promotion of  
 2045 the growth and use of cotton?

2046 § 3.2-1508. Persons eligible to vote.

2047 Any person in the Commonwealth who produced at least one bale of cotton in the Commonwealth in  
 2048 the fiscal year preceding any referendum held pursuant to this chapter shall be eligible to vote in such  
 2049 referendum, provided that he so certifies on forms prepared by the Commissioner. Completed  
 2050 certification forms shall include the following information: (i) the full name, address, and, if applicable,  
 2051 title of producer if a partner or corporate officer; (ii) the name and locality of each handler of that  
 2052 producer's cotton in the fiscal year preceding the referendum; and (iii) any other information deemed  
 2053 necessary by the Commissioner to carry out the Commissioner's duties under this section. Any person  
 2054 who meets the requirements of this section shall be eligible to vote in the referendum, but no person  
 2055 shall be required to be a qualified voter in other respects. Such person may vote provided that they are  
 2056 a resident of the Commonwealth or qualified to do business in the Commonwealth. Any person who is  
 2057 not an individual shall vote by its authorized representative. Only one person per farming unit shall be  
 2058 eligible to vote in any referendum.

2059 § 3.2-1509. Referenda results; action of Governor.

2060 If the Governor finds any separate referendum held pursuant to this chapter in order, that at least  
 2061 50 percent of those who have met the requirements of § 3.2-1508 have voted, and that a majority of  
 2062 those voting are in opposition to the continuation of the Cotton Board or in opposition to allowing the  
 2063 Cotton Board to increase the assessment on cotton, then the Governor shall so proclaim and upon such  
 2064 proclamation either the Cotton Board will be discontinued or the assessment on cotton will not be  
 2065 increased. If the Governor finds that one-half or more of those voting are in favor of the continuation of  
 2066 the Cotton Board or are in favor of allowing the Cotton Board to increase the assessment on cotton,  
 2067 then the Governor shall so proclaim, and either the Cotton Board shall continue or the Cotton Board  
 2068 shall be authorized to increase the assessment on cotton by a maximum of \$0.15 per bale. The cost of  
 2069 conducting a referendum under this section shall be from funds paid into the Virginia Cotton Fund as  
 2070 established in § 3.2-1511.

2071 § 3.2-1510. Production areas designated.

2072 The following production areas are designated for the purposes of this chapter:

2073 Area I: The Cities of Chesapeake, Virginia Beach, and Suffolk;

2074 Area II: Isle of Wight County;

2075 Area III: Charles City, Henrico, New Kent, Essex, King and Queen, King William, Lancaster, and  
 2076 Northumberland Counties;

2077 Area IV: Surry and Prince George Counties;

2078 Area V: Southampton County;

2079 Area VI: Dinwiddie, Sussex, and Amelia Counties;

2080 Area VII: Brunswick, Greensville, and Campbell Counties; and

2081 Area VIII: Accomack and Northampton Counties.

2082 If the production of cotton occurs in any locality that is not part of a production area as designated  
 2083 in this section, such locality shall be part of the nearest adjacent production area. If there are two or  
 2084 more nearest adjacent production areas, such locality shall be part of that production area that had the  
 2085 lowest cotton production in the most recent calendar year according to the records of the Department.

2086 § 3.2-1511. Virginia Cotton Fund established.

2087 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
 2088 Cotton Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the

2089 Comptroller. All assessments paid pursuant to § 3.2-1512 shall be paid into the state treasury and  
2090 credited to the Fund.

2091 The Cotton Board, to help defray the costs of Cotton Board programs, may sell printed materials,  
2092 rent exhibit space at meetings, and engage in any revenue-producing activity related to research,  
2093 education, and promotion of the growth and use of cotton. The Cotton Board shall promptly pay the  
2094 proceeds of any such revenue-producing activities into the Fund.

2095 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
2096 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
2097 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of  
2098 carrying out the provisions of this chapter. Expenditures and disbursements from the Fund shall be  
2099 made by the Cotton Board on warrants issued by the Comptroller upon written request signed by a duly  
2100 authorized officer of the Cotton Board.

2101 The Auditor of Public Accounts shall audit all the accounts of the Cotton Board as provided in  
2102 § 30-133.

2103 § 3.2-1512. Collection and disposition of assessment by handler; reports.

2104 A. Every handler shall collect an assessment of 85 cents (\$0.85) per bale from the owner of all  
2105 cotton that the handler gins for any owner and shall remit such assessment to the Tax Commissioner on  
2106 or before the last day of the month following the end of each calendar quarter. Such assessment shall  
2107 be in addition to any moneys collected by the handler as authorized by the Cotton Research and  
2108 Promotion Act (7 U.S.C. §§ 2101-2118). The Tax Commissioner shall promptly pay the assessments into  
2109 the state treasury to the credit of the Virginia Cotton Fund.

2110 B. Every handler shall complete reports on forms furnished by the Tax Commissioner, submit such  
2111 reports to the Tax Commissioner along with the assessments submitted pursuant to subsection A, and  
2112 keep copies of the reports for a period of not less than three years from the time the report was  
2113 produced. Each report shall consist of information for the calendar quarter preceding the month such  
2114 report is due and shall include the following: (i) the number of bales that the handler has ginned; (ii)  
2115 the dollar amount of assessments collected by the handler; (iii) a list of those from whom an assessment  
2116 has been collected for cotton ginned by the handler; (iv) the dollar amounts of all assessments collected  
2117 from each owner of cotton ginned by the handler; and (v) any other information deemed necessary by  
2118 the Tax Commissioner to carry out his duties under this chapter. Notwithstanding the provisions of  
2119 § 58.1-3, upon request, the Tax Commissioner shall provide to the Cotton Board or the Commissioner  
2120 copies of reports submitted pursuant to this section.

2121 C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

2122 § 3.2-1513. Records to be kept by handler.

2123 Every handler shall maintain the following records for all cotton ginned by the handler for the  
2124 owner of the cotton:

- 2125 1. Full name and address of the owner of the cotton;
- 2126 2. Date the cotton was ginned by the handler for such owner;
- 2127 3. Number of bales ginned; and
- 2128 4. Dollar amount of assessment collected by the handler from the owner.

2129 The handler shall maintain such records for a period of not less than three years from the time the  
2130 cotton was ginned. Such records shall be open to the inspection of the Tax Commissioner and shall be  
2131 established and maintained as required by the Tax Commissioner.

2132 § 3.2-1514. Falsification of records; misdemeanor.

2133 It is a Class 1 misdemeanor:

- 2134 1. For any handler to fail to submit to the Tax Commissioner any report required pursuant to  
2135 § 3.2-1512 within 60 days after the time such report is required to be submitted.
- 2136 2. For any handler knowingly to report falsely to the Tax Commissioner any information required  
2137 pursuant to § 3.2-1512.
- 2138 3. For any producer knowingly to report falsely to the Commissioner any information required  
2139 pursuant to § 3.2-1508.

2140 CHAPTER 16.  
2141 EGG BOARD.

2142 § 3.2-1600. Definitions.

2143 As used in this chapter, unless the context requires a different meaning:

2144 "Eggs for consumption" means eggs that are actually consumed in Virginia or sold at a location in  
2145 Virginia.

2146 "Eggs for use" means eggs that are incorporated into another product at a Virginia location so as to  
2147 lose their character as eggs.

2148 "Handler" means any person who operates a grading station, a packer, distributor, or other person  
2149 who purchases, sells, or handles eggs that are used at the wholesale level for consumption in Virginia

2150 or, a farmer who packs, processes, or otherwise performs the functions of a handler. The term shall also  
2151 mean any person in Virginia who purchases eggs, or the liquid equivalent thereof, from anyone other  
2152 than a registered handler for use or consumption at wholesale in the Commonwealth. The functions of a  
2153 handler include the sale, distribution, or other disposition of eggs at the wholesale level for use or  
2154 consumption in Virginia regardless of where the eggs were produced or purchased.

2155 "Registered handler" means any person who has registered with the Tax Commissioner to receive  
2156 monthly return forms and report the egg tax.

2157 § 3.2-1601. Egg Board; composition and appointment of members.

2158 The Egg Board is continued within the Department. The Egg Board shall be composed of seven  
2159 members appointed by the Governor and confirmed in accordance with § 2.2-107 from nominations  
2160 submitted to him by the Virginia Egg Council.

2161 § 3.2-1602. Egg Board membership terms.

2162 The terms of the members of the Egg Board shall run concurrently with the term of the Governor  
2163 making the appointments. Vacancies occurring before the expiration of the term shall be filled for the  
2164 unexpired term.

2165 § 3.2-1603. Egg Board officers and compensation.

2166 A. The Egg Board shall elect a chairman and such other officers as deemed appropriate.

2167 B. The members of the Egg Board shall be paid a per diem of \$10 while transacting official business  
2168 for the Egg Board and shall be entitled to be reimbursed for expenses incurred in connection with their  
2169 attendance at regular or special meetings of the Egg Board.

2170 § 3.2-1604. Powers and duties of Egg Board.

2171 A. The Egg Board shall have charge of the management and expenditures of the Virginia Egg Fund  
2172 established in the state treasury.

2173 B. The Egg Board may expend funds to provide for programs of research, education, publicity,  
2174 advertising, and other promotion of eggs that are the subject of the tax levy; manage the Virginia Egg  
2175 Fund so as to accumulate a reserve for contingencies; establish an office and employ such technical,  
2176 professional, and other assistants as may be required; contract for research, publicity, advertising, and  
2177 other promotional services; and take measures to strengthen and promote the best interest of farmers  
2178 producing eggs on which the tax has been levied in accordance with the provisions of this chapter.

2179 C. The Egg Board may establish an executive committee and charge it with such powers, duties, and  
2180 functions as the Egg Board deems proper.

2181 D. The chairman of the Egg Board shall make a report at each annual meeting of the Egg Board  
2182 and furnish the members of the Egg Board with a statement of the total receipts and disbursements for  
2183 the year. He shall file a copy of the report with the Commissioner and make copies of the report  
2184 available for publication.

2185 E. The Auditor of Public Accounts shall audit the accounts of the Egg Board as provided for in  
2186 § 30-133.

2187 § 3.2-1605. Virginia Egg Fund established.

2188 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
2189 Egg Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the  
2190 Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the  
2191 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the  
2192 Fund and be credited to it. Any moneys remaining the Fund, including interest thereon, at the end of  
2193 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund  
2194 shall be used exclusively for the purposes set out in this chapter.

2195 In carrying out the purposes of this article, the Egg Board may cooperate with other state, regional,  
2196 and national agricultural organizations in research, education, publicity, advertising, and other  
2197 promotional activities.

2198 Expenditures and disbursements from the Fund shall be made by the Egg Board on warrants issued  
2199 by the Comptroller upon written request signed by the duly authorized officer of the Egg Board.

2200 § 3.2-1606. Levy of tax; regulations.

2201 There is hereby levied on eggs purchased or sold for use or consumption in the Commonwealth an  
2202 excise tax of five cents (\$0.05) per 30-dozen case or, if the eggs are purchased or sold in other than  
2203 shell form, 11 cents (\$0.11) per 100 pounds of liquid eggs or liquid equivalent. Such excise tax shall be  
2204 levied only once. The Tax Commissioner, with the advice and consent of the Egg Board, may adopt  
2205 regulations as are necessary for the interpretation, administration, and enforcement of this tax.

2206 § 3.2-1607. Collection and disposition of tax by handler; reports.

2207 A. Every handler shall collect the tax imposed by this chapter from the person who purchases eggs  
2208 for use or consumption in the Commonwealth and shall remit the tax to the Tax Commissioner by the  
2209 20th day of each month.

2210 B. Every handler shall complete reports on forms furnished by the Tax Commissioner and submit the  
2211 reports to the Tax Commissioner together with the tax submitted pursuant to subsection A. Each report

2212 shall include a statement of the gross volume of taxed eggs that have been packed, processed,  
 2213 purchased, sold, or handled by the handler. A copy of the completed report shall simultaneously be filed  
 2214 with the Egg Board. The Tax Commissioner may disclose to the duly authorized officer of the Egg  
 2215 Board tax information relating to the egg tax.

2216 C. Every person who engages in business in the Commonwealth as a handler shall register, collect,  
 2217 and pay the tax on all eggs sold or delivered to anyone other than a registered handler for storage, use,  
 2218 or consumption in the Commonwealth. Such handlers shall maintain a certificate of registration, file  
 2219 returns, and perform all other duties required of handlers.

2220 D. Any tax that is not paid when due shall be collected pursuant to § 3.2-1102.

2221 § 3.2-1608. Exemptions.

2222 The following categories of eggs shall be exempt from the tax levied pursuant to this chapter:

2223 1. The eggs of any producer selling less than 500 cases per year, or the liquid equivalent thereof.

2224 2. Eggs when sold between registered handlers.

2225 The Tax Commissioner shall provide a mechanism for returning taxes paid by exempt persons.

2226 § 3.2-1609. Records to be kept by handlers.

2227 Every handler shall keep a complete record of the eggs subject to the provisions of this chapter that  
 2228 are packed, processed, or handled by him and shall preserve such records for a period of not less than  
 2229 three years from the time the eggs were packed, processed, or handled. Such records shall be open for  
 2230 inspection by the Tax Commissioner and shall be established and maintained as required by the Tax  
 2231 Commissioner.

2232 § 3.2-1610. Falsification of records; misdemeanor.

2233 It is a Class 1 misdemeanor:

2234 1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of shell or  
 2235 processed eggs handled by him during any period.

2236 2. For any handler to falsify the records of the eggs processed, packed, or handled by him.

2237 3. For any handler to fail to maintain a complete record of the eggs processed, packed, or handled  
 2238 by him for at least three years from the time such eggs are processed, packed, or handled.

2239 CHAPTER 17.

2240 HORSE INDUSTRY BOARD.

2241 Article 1.

2242 Horse Industry Board.

2243 § 3.2-1700. Horse Industry Board; composition and appointment of members; quorum.

2244 The Horse Industry Board, established by the passage of a referendum held pursuant to Chapters  
 2245 790 and 805 of the 1993 Acts of Assembly, is continued within the Department. The Horse Industry  
 2246 Board shall consist of 12 members representing the horse industry, industry support services, education,  
 2247 and equine health. Four members shall be the presidents of the following industry organizations: the  
 2248 Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows  
 2249 Association, and the Virginia Quarter Horse Association. Four members shall serve at large, to be  
 2250 appointed by the Governor from nominations made by the remaining statewide horse breed or use  
 2251 organizations. The Governor shall also appoint two members from recommendations submitted by the  
 2252 Virginia horse industry: one shall be a representative of the horse industry support services or  
 2253 professional community (feed manufacturing or sales, pharmaceutical sales, horseshoeing, marketing,  
 2254 veterinary services, etc.) and the other shall be an individual commercially involved in the horse  
 2255 industry (manager, trainer, etc.).

2256 The extension horse specialist from Virginia Polytechnic Institute and State University shall serve as  
 2257 a voting member of the Horse Industry Board. The Commissioner shall serve as a nonvoting member.

2258 Seven members shall constitute a quorum for the transaction of business.

2259 The presidents of the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the  
 2260 Virginia Horse Shows Association, and the Virginia Quarter Horse Association may each designate in  
 2261 writing a member of his organization as an alternate who may attend meetings in his place and be  
 2262 counted as a member of the Horse Industry Board for the purposes of a quorum and for voting.

2263 § 3.2-1701. Horse Industry Board membership terms.

2264 The terms for appointments to the Horse Industry Board shall be for three years, with no at-large  
 2265 member serving more than two consecutive terms.

2266 § 3.2-1702. Horse Industry Board officers and compensation.

2267 A. The Horse Industry Board shall elect from its membership a chairman and such other officers as  
 2268 it deems appropriate.

2269 B. Members of the Horse Industry Board not representing agencies of the Commonwealth shall be  
 2270 reimbursed from the Virginia Horse Industry Promotion and Development Fund for all reasonable and  
 2271 necessary expenses incurred by them in the performance of their duties on behalf of the Horse Industry  
 2272 Board.

2273 § 3.2-1703. Powers and duties of Horse Industry Board.

2274 A. The Horse Industry Board shall be responsible for the promotion and economic development of  
2275 the equine industry in the Commonwealth. To accomplish this function the Horse Industry Board is  
2276 authorized to:

- 2277 1. Produce economic reports;
- 2278 2. Develop a horse industry directory;
- 2279 3. Provide funding for educational programs;
- 2280 4. Provide funding for research;
- 2281 5. Engage in media liaison;
- 2282 6. Collect and analyze data on the horse industry;
- 2283 7. Disseminate industry-related data; and
- 2284 8. Enter into contracts and agreements to accomplish the purposes of this chapter.

2285 B. The chairman of the Horse Industry Board shall make an annual report to the Horse Industry  
2286 Board including a statement of the total receipts and disbursements for the year and shall file a copy of  
2287 such report with the Commissioner.

2288 § 3.2-1704. Virginia Horse Industry Promotion and Development Fund established.

2289 A. There is hereby created in the state treasury a special nonreverting fund to be known as the  
2290 Virginia Horse Industry Promotion and Development Fund, hereafter referred to as "the Fund." The  
2291 Fund shall be established on the books of the Comptroller. All assessments collected pursuant to this  
2292 chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the  
2293 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including  
2294 interest thereon, at the end of each fiscal year shall not revert or be transferred to the general fund but  
2295 shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of carrying out the  
2296 provisions of this chapter.

2297 B. The Auditor of Public Accounts shall audit all the accounts of the Horse Industry Board as  
2298 provided in § 30-133.

2299 C. Expenditures and disbursements from the Fund shall be made by the Horse Industry Board on  
2300 warrants issued by the Comptroller upon written request signed by a duly authorized officer of the  
2301 Horse Industry Board.

2302 § 3.2-1705. Management of referenda; Commissioner's duties; notice.

2303 A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

2304 B. The Commissioner shall, at least 60 days before the date upon which a referendum is to be held,  
2305 mail notice to the clerk of the circuit court in each locality where those eligible to vote in the  
2306 referendum reside. The clerk of the circuit court shall post the notice and regulations on the front door  
2307 or public bulletin board of the courthouse and certify the posting to the Commissioner. The  
2308 Commissioner shall give general notice of the referendum in a newspaper of general circulation in  
2309 Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation for  
2310 each area where members of the horse industry reside, at least 60 days prior to the holding of any  
2311 referendum under this chapter.

2312 The notice shall contain: (i) the date, hours, polling place, and method of voting in such referendum;  
2313 (ii) the amount of assessment to be collected, means by which such assessment shall be collected, and  
2314 general purposes for which the assessments will be used; and (iii) the regulations adopted by the Board  
2315 pursuant to § 3.2-112.

2316 C. The Commissioner shall prepare and distribute in advance of such referendum all necessary  
2317 ballots, certificates, and supplies required for such referendum and shall, under regulations adopted by  
2318 the Board, arrange for the use of polling places, if necessary.

2319 D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the  
2320 results thereof and certify the same to the Governor and the Board.

2321 § 3.2-1706. Commissioner to maintain referenda results.

2322 The Commissioner shall maintain records of the number of eligible persons who voted in any  
2323 referendum authorized under this chapter.

2324 Article 2.

2325 Equine Infectious Anemia Test Fee.

2326 § 3.2-1707. Fees to be assessed; State Veterinarian to collect.

2327 A fee of \$1.50 shall be assessed on each equine infectious anemia test performed on samples  
2328 collected in the Commonwealth. Such fees shall be collected by the State Veterinarian for deposit into  
2329 the Virginia Horse Industry Promotion and Development Fund established by § 3.2-1704.

2330 § 3.2-1708. Referenda.

2331 The Board, upon petition by members of the horse industry representing at least 10 percent of the  
2332 number of members of the horse industry who voted in the preceding referendum, or as determined by  
2333 the Commissioner, may provide for a referendum on the continuation of the equine infectious anemia  
2334 test assessment in accordance with the provisions of §§ 3.2-112 and 3.2-1705. The Board shall not act

2335 on such a petition for conducting such a referendum until at least five years have passed since the last  
 2336 referendum. If the Governor determines that a simple majority is not in favor of the assessment, the  
 2337 Board shall hold no new referendum for at least one year after the Governor has declared his findings.  
 2338 The cost of conducting any such referendum under this section shall be from the Virginia Horse  
 2339 Industry Promotion and Development Fund.

2340 § 3.2-1709. Question to be printed on ballots.

2341 The question to be printed on the ballots used in any referendum held under this article shall be as  
 2342 follows:

2343 "Do you favor additional market development, education, publicity, research, and promotion of the  
 2344 Virginia horse industry and continuation of the levy of an assessment of \$1.50 on each equine infectious  
 2345 anemia test performed on samples collected in Virginia in accordance with the provisions of the Horse  
 2346 Industry Board law?

2347 \_\_\_\_\_ Yes  
 2348 \_\_\_\_\_ No."

2349 § 3.2-1710. Persons eligible to vote.

2350 Each member of the horse industry who has paid for the administering of the equine infectious  
 2351 anemia test during the previous fiscal year shall be eligible to vote in a referenda, provided that he  
 2352 certifies on forms approved by the Board that he has paid for such a test. Any person meeting such  
 2353 requirements shall be eligible to vote in the referendum, but no person shall be required to be a  
 2354 qualified voter in other respects. Any person who is not an individual shall vote by its authorized  
 2355 representative.

2356 § 3.2-1711. Referenda results; action of Governor.

2357 If the Governor finds any referenda in order, and that at least a simple majority of those voting are  
 2358 in opposition to the continuation of the equine infectious anemia test assessment, he shall so proclaim  
 2359 and upon such proclamation the assessment shall be discontinued. If the Governor finds that at least a  
 2360 simple majority of those voting are in favor of the continuation of the assessment, the Governor shall  
 2361 not so proclaim.

### 2362 Article 3. 2363 Equine Feed Assessment.

2364 § 3.2-1712. Definitions.

2365 As used in this article, unless the context requires a different meaning:

2366 "Manufactured equine feed" means a commercial feed as defined by § 3.2-4800 that is intended for  
 2367 consumption by horses or other equine.

2368 "Manufacturer" means any person who manufactures equine feed and is licensed to conduct business  
 2369 in the Commonwealth under § 3.2-4803.

2370 § 3.2-1713. Petition for referendum on question of assessment; action of Board and Commissioner;  
 2371 amount of assessment.

2372 The Board, upon a joint petition requesting a referendum being filed with it by at least three of the  
 2373 following: the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse  
 2374 Shows Association, the Virginia Quarter Horse Association, the Virginia Farm Bureau Federation, or  
 2375 the Virginia Agribusiness Council, and upon finding that sufficient interest exists among the members of  
 2376 the equine owners in the Commonwealth to justify a referendum, shall authorize the holding of a  
 2377 referendum as set forth in this article.

2378 The Commissioner shall thereupon be fully empowered and directed to hold and conduct a  
 2379 referendum, in accordance with the provisions of §§ 3.2-112 and 3.2-1705, on the question of whether  
 2380 or not equine owners in the Commonwealth are of the opinion that additional market development,  
 2381 education, publicity, research, and promotion of the equine industry are required. If approved in the  
 2382 referendum authorized by this section, an assessment of \$3 per ton or \$0.075 per 50-pound bag of  
 2383 manufactured equine feed shall be established. The cost of conducting a referendum under this section  
 2384 shall be paid from the Virginia Horse Industry Promotion and Development Fund.

2385 § 3.2-1714. Persons eligible to vote.

2386 Any person who owns an equine in the Commonwealth shall be eligible to vote in a referendum held  
 2387 under this article if he executes and submits to the Commissioner an affidavit on forms and methods  
 2388 approved by the Board verifying Virginia residency, legal voting age, and at least one of the following  
 2389 to confirm equine ownership:

2390 1. Current breed or discipline registration for an equine owned in the Commonwealth.

2391 2. Receipt of a valid Virginia equine infectious anemia test within the last 12 months indicating an  
 2392 ownership interest in an equine.

2393 3. A lease purchase agreement, contract, bill of sale, or other legal document showing current  
 2394 ownership or lease interest in an equine stabled or pastured in the Commonwealth.

2395 Completed forms shall include the full name of the person submitting the form along with an

2396 associated farm name, if applicable, mailing address, and phone number. Any person who is not an  
 2397 individual shall vote by its authorized representative.

2398 § 3.2-1715. Question to be printed on ballots.

2399 The question to be printed on the ballots used in the initial referendum held pursuant to § 3.2-1713,  
 2400 shall be as follows:

2401 "Do you favor additional market development, education, publicity, research, and promotion of the  
 2402 Virginia equine industry and the levy of an assessment of \$3 per ton or \$0.075 per 50-pound bag of  
 2403 manufactured equine feed sold in the Commonwealth of Virginia in accordance with the provisions of  
 2404 the Horse Industry Board law?

2405 \_\_\_\_\_ Yes

2406 \_\_\_\_\_ No."

2407 § 3.2-1716. Action of Governor if a simple majority of voters favors assessment.

2408 If the Governor finds the referendum in order and that at least a simple majority of those voting are  
 2409 in favor of the assessment for the purpose of conducting additional programs in market development,  
 2410 education, publicity, research, and promotion of the equine industry, he shall so proclaim and an  
 2411 assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be established  
 2412 within 180 days of such proclamation and collected as set forth in this chapter.

2413 § 3.2-1717. Action of Governor if referendum found out of order or less than a simple majority of  
 2414 voters favors assessment.

2415 If the Governor finds the referendum out of order, or that at least a simple majority of those voting  
 2416 are not in favor of the assessment for the purpose of conducting additional programs of market  
 2417 development, education, publicity, research, and promotion of the equine industry, he shall so proclaim  
 2418 and an assessment on manufactured equine feed shall not be established.

2419 § 3.2-1718. Referenda.

2420 If the Governor issues a proclamation under § 3.2-1716, then no other referendum shall be held on  
 2421 the equine industry that was the subject of the proclamation except that after the expiration of five years  
 2422 from the date of the imposition of the assessment on manufactured equine feed, another referendum may  
 2423 be held in the manner herein prescribed to determine whether the assessment shall be continued or  
 2424 adjusted. The Board, upon petition by members of the equine industry representing at least 10 percent  
 2425 of the number of members of the equine industry who voted in the preceding referendum, or as  
 2426 determined by the Commissioner, may provide for a referendum on the continuation or adjustment of the  
 2427 assessment. The Board shall not act on such a petition for conducting such a referendum until at least  
 2428 five years have passed from the time the manufactured equine feed assessment was established or until  
 2429 at least five years have passed since the last referendum.

2430 If the Governor determines that a simple majority is not in favor of the assessment, the Board shall  
 2431 hold no new referendum for at least one year after the Governor has declared his findings, but, at the  
 2432 expiration of one year and upon petition by 10 percent of the members of the Commonwealth's equine  
 2433 industry that voted in the most recent referendum, the Board may provide for a referendum. The cost of  
 2434 conducting any referendum under this section may be paid from the Virginia Horse Industry Promotion  
 2435 and Development Fund.

2436 § 3.2-1719. Collection and disposition of assessment by manufacturer; report.

2437 A. Every manufacturer shall collect an assessment of \$3 per ton or \$0.075 per 50-pound bag of  
 2438 manufactured equine feed he sells in the Commonwealth and on any manufactured equine feed he  
 2439 imports for sale in the Commonwealth and shall remit such assessment to the Department annually. The  
 2440 Department shall promptly pay the assessments into the state treasury to the credit of the Virginia  
 2441 Horse Industry Promotion and Development Fund.

2442 B. Every manufacturer shall complete, on forms furnished by the Department, an annual report of  
 2443 the total tonnage of manufactured equine feed he sold and imported into the Commonwealth. Such  
 2444 reports shall be submitted to the Department along with the assessments submitted pursuant to  
 2445 subsection A. The reporting year for manufactured equine feed shall be January 1 through December  
 2446 31.

2447 C. All assessments collected under this section shall be paid to the Department by February 1 for the  
 2448 preceding calendar year.

2449 § 3.2-1720. Records to be kept by manufacturer.

2450 Any manufacturer who is required to collect the equine feed assessment under this article shall  
 2451 maintain such records as may be necessary or required by the Commissioner to accurately indicate the  
 2452 tonnage of manufactured equine feed that he has sold or imported for sale in the Commonwealth. The  
 2453 manufacturer shall maintain such records for a period of not less than three years from the time the  
 2454 manufactured equine feed was sold. Such records shall be open to the inspection of the Commissioner.

2455 § 3.2-1721. Collection of delinquent assessments; civil action.

2456 Any manufacturer who is required to collect the equine feed assessment under this article and who  
 2457 has not paid the assessment to the Commissioner within 15 working days following the due date of



2458 February 1 shall pay to the Commissioner a late fee of 10 percent of the amount due or \$50, whichever  
 2459 is greater, in addition to the amount of assessment owed. The appraisal of this late fee shall not prevent  
 2460 the Commissioner from taking other action, as provided for in this chapter. If any person is delinquent  
 2461 in any payment of the money due, then the amount shall be collected by civil action in the name of the  
 2462 Commonwealth at the direction of the Commissioner, and any person adjudged to be in default shall  
 2463 pay the cost of such action. The Attorney General, at the request of the Commissioner, shall institute  
 2464 action in any appropriate court for the collection of any money due, including interest thereon.

2465 § 3.2-1722. Falsification of records; misdemeanor.

2466 It is a Class 1 misdemeanor:

2467 1. For any manufacturer to fail to submit to the Department any report required pursuant to  
 2468 § 3.2-1719 within 60 days after the time such report is due.

2469 2. For any manufacturer knowingly to report falsely to the Department any information required  
 2470 pursuant to this article.

2471 CHAPTER 18.

2472 POTATO BOARD.

2473 § 3.2-1800. Definitions.

2474 As used in this chapter, unless the context requires a different meaning:

2475 "Handler" means any person who is a processor, dealer, shipper, or exporter who purchases  
 2476 potatoes from a grower, or who acts as the grower's agent, or any person who holds a produce dealer  
 2477 or commission merchant license from the Department. The term also means any producer who packs,  
 2478 processes, or otherwise performs the functions of a handler pursuant to the provisions of this chapter.

2479 "Jurisdiction" means any locality where potatoes are produced according to the records of the  
 2480 Department.

2481 "Potatoes" means all varieties of potatoes except sweet potatoes.

2482 "Producer" means any person who, in a calendar year, grows a minimum of 40,000 pounds of  
 2483 potatoes in the Commonwealth.

2484 § 3.2-1801. Potato Board; composition and appointment of members.

2485 The Potato Board, established by the passage of a 1994 referendum held pursuant to Chapter 126 of  
 2486 the 1982 Acts of Assembly, is continued within the Department. The Potato Board shall be composed of  
 2487 seven members appointed by the Governor from nominations by grower organizations, the appointments  
 2488 to be subject to confirmation by the General Assembly. All members of the Potato Board shall be  
 2489 producers of potatoes.

2490 § 3.2-1802. Potato Board membership terms.

2491 The terms for appointments to the Potato Board shall be four years. The Governor shall fill any  
 2492 vacancy occurring before the expiration of any term for the unexpired term.

2493 § 3.2-1803. Potato Board officers and compensation.

2494 A. The Potato Board shall elect a chairman and such other officers as deemed appropriate.

2495 B. Members of the Potato Board may be reimbursed for expenses incurred in connection with their  
 2496 attendance at regular or special meetings of the Potato Board.

2497 § 3.2-1804. Powers and duties of the Potato Board.

2498 A. The Potato Board shall have charge of the management and expenditures of the Virginia Potato  
 2499 Fund established in the state treasury.

2500 B. The Potato Board may expend funds to provide for programs of research, education, publicity,  
 2501 advertising, and other promotion; manage the fund so as to accumulate a reserve for contingencies;  
 2502 establish an office and employ such technical and professional assistants as may be required; contract  
 2503 for research, publicity, advertising and other promotional services; and take all actions as will assist in  
 2504 strengthening and promoting the best interest of producers of potatoes.

2505 C. In carrying out the purposes of this chapter, the Potato Board may cooperate with other state,  
 2506 regional, and national agricultural organizations in research, education, publicity, advertising, and other  
 2507 promotional activities.

2508 D. The Potato Board may establish an executive committee and charge it with those powers, duties,  
 2509 and functions as the Potato Board deems proper.

2510 E. The chairman of the Potato Board shall make an annual report to the Potato Board including a  
 2511 statement of the total receipts and disbursements for the year and shall file a copy of the report and the  
 2512 audit required by § 3.2-1810 with the Commissioner.

2513 § 3.2-1805. Referenda.

2514 Upon a petition, or its own motion, or that of an interested person properly made, the Board may  
 2515 hold a referendum on the continuance of the tax. If a petition is not presented to the Board or the  
 2516 Board is not otherwise advised, the tax to support additional research and promotion of potatoes shall  
 2517 continue to be levied and collected as provided for in this chapter. The cost of conducting any  
 2518 referendum as prescribed in this chapter shall be paid from funds paid into the Virginia Potato Fund.

2519 *The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.*

2520 *§ 3.2-1806. Management of referenda; Commissioner's duties; notice.*

2521 *A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this*  
2522 *chapter.*

2523 *B. The Commissioner shall, at least 60 days before the referendum is to be held, mail notice to the*  
2524 *clerk of the circuit court in each locality where producers are located.*

2525 *The clerk of the circuit court shall post the notice and the regulations on the front door or public*  
2526 *bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall*  
2527 *give notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall*  
2528 *send a notice of the referendum to a newspaper of general circulation in each locality where producers*  
2529 *are located at least 60 days prior to the holding of any referendum pursuant to the provisions of this*  
2530 *chapter. The notice shall contain the date, hours, voting places, and method of voting in the referendum,*  
2531 *the amount of tax to be collected, the means by which the tax shall be collected, the general purposes*  
2532 *for how the taxes will be used, and the regulations adopted by the Board hereunder.*

2533 *C. The Commissioner, with the assistance of the petitioners, shall prepare and distribute in advance*  
2534 *of the referendum all necessary ballots and supplies required for the referendum and shall under*  
2535 *regulations adopted by the Board and with the assistance of the petitioners and the Extension Service*  
2536 *arrange for the necessary polling places.*

2537 *D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the*  
2538 *results thereof and certify the same to the Governor and the Board.*

2539 *§ 3.2-1807. Question to be printed on ballots.*

2540 *The question to be printed on the ballots used in a referendum pursuant to this chapter shall be as*  
2541 *follows:*

2542 *"Do you favor additional research, education, publicity, advertising, and other promotion of potatoes*  
2543 *and the continuation of the levy of two cents (\$0.02) per 100 pounds in accordance with the provisions*  
2544 *of the Potato Board law to support the same?"*

2545 *– Yes*

2546 *– No."*

2547 *§ 3.2-1808. Persons eligible to vote.*

2548 *Each producer in the Commonwealth who produced 40,000 pounds of potatoes during the year next*  
2549 *preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in the*  
2550 *referendum if he certifies to the required production. The certification shall be on forms approved by the*  
2551 *Board. Any person meeting these requirements shall be eligible to vote in the referendum, but no person*  
2552 *shall be required to be a qualified voter in any other respect. Any person who is not an individual shall*  
2553 *vote by its authorized representative.*

2554 *§ 3.2-1809. Referenda results; action of Governor.*

2555 *The Governor shall examine all matters relating to the referendum and whether a majority of the*  
2556 *producers voting expressed a desire for additional research, education, publicity, advertising, and other*  
2557 *means of promotion and continuing the levying of the tax to support them. If the Governor finds the*  
2558 *referendum in order and that a majority of those voting are in opposition to the continuation of the*  
2559 *levying of the tax on potatoes, he shall so proclaim and upon such proclamation the tax on potatoes*  
2560 *shall be discontinued. If the Governor finds that a majority of those voting are in favor of the*  
2561 *continuation of the tax on potatoes, the Governor shall not so proclaim.*

2562 *§ 3.2-1810. Virginia Potato Fund established.*

2563 *There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia*  
2564 *Potato Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the*  
2565 *Comptroller.*

2566 *All moneys levied and collected pursuant to this chapter shall be paid into the state treasury and*  
2567 *credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited*  
2568 *to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall*  
2569 *not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for*  
2570 *the purposes set forth in this chapter.*

2571 *Expenditures and disbursements from the Fund shall be made by the Potato Board on warrants*  
2572 *issued by the Comptroller upon written request signed by the duly authorized officer of the Potato*  
2573 *Board.*

2574 *The Auditor of Public Accounts shall audit all the accounts of the Potato Board as is provided for in*  
2575 *§ 30-133.*

2576 *§ 3.2-1811. Collection and disposition of tax by handler; reports.*

2577 *A. Every handler who purchases from a producer shall deduct, from payments made to the producer*  
2578 *for any potatoes, a tax of two cents (\$0.02) per 100 pounds of potatoes and shall remit the tax to the*  
2579 *Commissioner on or before the 20th day of each month. The tax shall be paid to the Commissioner and*  
2580 *shall be promptly paid into the state treasury to the credit of the Virginia Potato Fund.*

2581 *B. Every handler shall complete a report consisting of a statement of the gross volume of potatoes*  
 2582 *on which the tax was levied that were packed, processed, or handled by the handler and shall file such*  
 2583 *report with the Commissioner together with the tax submitted pursuant to subsection A. The tax levied*  
 2584 *on potatoes shall be due by the handler on the same day that the report is due.*

2585 *§ 3.2-1812. Collection of delinquent tax; civil action.*

2586 *The tax imposed under the provisions of this chapter and unpaid on the date when due shall bear*  
 2587 *interest at a rate determined in accordance with § 58.1-1812, from and after the due date until paid. If*  
 2588 *any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a*  
 2589 *civil action in the name of the Commonwealth at the relation of the Board and the person adjudged in*  
 2590 *default shall pay the costs of the proceeding. The Attorney General, at the request of the Commissioner,*  
 2591 *shall institute an appropriate action for the collection of the amount of any tax past due under this*  
 2592 *chapter, including interest thereon.*

2593 *§ 3.2-1813. Records to be kept by handlers.*

2594 *Every handler shall keep a complete record of the potatoes subject to the provisions of this chapter*  
 2595 *that have been packed, processed, or handled by him for a period of time not less than three years from*  
 2596 *the time the potatoes were packed, processed, or handled. The records shall be open to the inspection of*  
 2597 *the Commissioner and shall be established and maintained as required by the Commissioner.*

2598 *§ 3.2-1814. Falsification of records; misdemeanor.*

2599 *It is a Class 1 misdemeanor:*

2600 *1. For any handler knowingly to report falsely to the Commissioner the quantity of potatoes*  
 2601 *processed or handled by him.*

2602 *2. For any handler to fail to keep a complete record of the potatoes processed or handled by him.*

2603 *3. For any handler to preserve the records for a period of time less than three years from the time*  
 2604 *such potatoes are processed or handled.*

2605 *§ 3.2-1815. Licenses.*

2606 *The Commissioner shall revoke the produce dealer or commission merchant license of any handler*  
 2607 *who fails to report, pay the tax, or perform any other duty required of him pursuant to the provisions of*  
 2608 *this chapter.*

#### CHAPTER 19. PEANUT BOARD.

2610 *§ 3.2-1900. Definitions.*

2611 *As used in this chapter, unless the context requires a different meaning:*

2612 *"Processor" means any person that cleans, shells, or crushes peanuts.*

2613 *§ 3.2-1901. Peanut Board; composition and appointment of members.*

2614 *The Peanut Board is continued within the Department. The Peanut Board shall consist of nine*  
 2615 *members representing as nearly as possible each peanut-producing section of the Commonwealth. Such*  
 2616 *members shall be appointed by the Governor, subject to confirmation by the General Assembly, and*  
 2617 *each of whom shall be a resident of the Commonwealth and engaged in producing peanuts in the*  
 2618 *Commonwealth. The Governor shall be guided in his appointments by the recommendations of the*  
 2619 *Virginia Peanut Growers Association or other peanut growers' organizations existing in*  
 2620 *peanut-producing counties.*

2621 *§ 3.2-1902. Peanut Board membership terms.*

2622 *The terms for appointments to the Peanut Board shall be for three years. The Governor shall fill any*  
 2623 *vacancy occurring before the expiration of any term for the unexpired term.*

2624 *§ 3.2-1903. Peanut Board officers and compensation.*

2625 *A. The Peanut Board shall elect one of its members as chairman and such other officers as deemed*  
 2626 *appropriate.*

2627 *B. Members of the Peanut Board shall serve without compensation but they shall be reimbursed for*  
 2628 *actual expenses incurred in attending meetings of the Peanut Board.*

2629 *§ 3.2-1904. Powers and duties of Peanut Board.*

2630 *A. All funds levied and collected under this chapter shall be administered by the Peanut Board.*

2631 *B. The Peanut Board shall plan and conduct campaigns for education, advertising, publicity, sales*  
 2632 *promotion, and research as to Virginia peanuts.*

2633 *C. The Peanut Board may make contracts, expend moneys of the Peanut Fund, and do whatever else*  
 2634 *may be necessary to effectuate the purposes of this chapter.*

2635 *D. The Peanut Board may cooperate with other state, regional, and national agricultural and peanut*  
 2636 *organizations in research, advertising, publicity, education, and other means of promoting the sale and*  
 2637 *use of peanuts, and may expend moneys of the Peanut Fund for such purposes.*

2638 *E. The Peanut Board may appoint a secretary and other employees as may be necessary at salaries*  
 2639 *to be fixed by the Peanut Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title*  
 2640 *2.2. All employees handling money under this chapter shall be required to furnish surety bonds.*

2641

2642 F. The chairman shall make a report at the annual meeting of the Peanut Board and furnish the  
 2643 members of the Peanut Board with a statement of the total receipts and disbursements for the year. He  
 2644 shall file a copy of the report and the audit required by § 3.2-1906 with the Commissioner.

2645 § 3.2-1905. Levy of excise tax.

2646 An excise tax of 15 cents (\$0.15) per 100 pounds is levied on all peanuts grown in and sold in the  
 2647 Commonwealth for processing. Peanuts sold for seed shall not be subject to the tax, nor shall any  
 2648 peanuts be subject to the tax after the tax has been paid once.

2649 § 3.2-1906. Peanut Fund established.

2650 There is hereby created in the state treasury a special nonreverting fund to be known as the Peanut  
 2651 Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the  
 2652 Comptroller. All moneys levied and collected under the provisions of this chapter, after deducting the  
 2653 expense to the Commonwealth of collecting the same, shall be paid into the state treasury and credited  
 2654 to the Fund.

2655 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
 2656 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
 2657 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
 2658 paying the costs of collecting the tax levied on peanuts pursuant to this chapter, the administration of  
 2659 this chapter, including payment for personal services and expenses of employees and agents of the  
 2660 Peanut Board, rent, services, materials, and supplies necessary to effectuate the purposes of this  
 2661 chapter. Expenditures and disbursements from the Fund shall be made by the Peanut Board on warrants  
 2662 issued by the Comptroller upon written request signed by a duly authorized officer of the Peanut Board.

2663 The Auditor of Public Accounts shall audit all the accounts of the Peanut Board as is provided for  
 2664 in § 30-133.

2665 § 3.2-1907. Collection and disposition of tax; reports.

2666 A. Every processor shall collect the tax on all peanuts bought by him and pay it into the Department  
 2667 of Taxation to the credit of the Peanut Fund. The tax collected between July 1 and December 31 of  
 2668 each year shall be paid not later than February 15 of the succeeding year, and the tax collected  
 2669 between January 1 and June 30 shall be paid not later than July 10 of each year.

2670 B. Every processor shall complete reports on forms furnished by the Tax Commissioner, submit such  
 2671 reports to the Tax Commissioner together with the tax submitted pursuant to subsection A, and keep  
 2672 copies of the reports for a period of not less than three years from the time the report was produced.

2673 C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

2674 § 3.2-1908. Record to be kept by processor.

2675 Every processor shall keep a complete record of the amount of peanuts, subject to tax, bought by  
 2676 him for a period of not less than three years. Such record shall be open to the inspection of the Tax  
 2677 Commissioner and his duly authorized agents.

2678 § 3.2-1909. Falsification of records; misdemeanor.

2679 It is a Class 1 misdemeanor:

2680 1. For any processor knowingly to report falsely to the Tax Commissioner the quantity of peanuts  
 2681 subject to tax bought by him during any period.

2682 2. For any processor to falsify the records of the peanuts subject to tax bought by him.

2683 § 3.2-1910. Failure to file reports; misdemeanor.

2684 Any processor who fails to file the required reports, or who fails to keep the required records, is  
 2685 guilty of a Class 1 misdemeanor. Each month of such failure is a separate offense.

2686 CHAPTER 20.

2687 PORK INDUSTRY BOARD.

2688 § 3.2-2000. Definitions.

2689 As used in this chapter, unless the context requires a different meaning:

2690 "Feeder pig" means a hog not weighing 140 pounds or less.

2691 "Processor" means any person that slaughters hogs commercially, or agent thereof.

2692 "Producer" means any person engaged in the business of raising hogs for sale for slaughter or  
 2693 raising hogs for sale as feeder pigs.

2694 "Slaughter hog" means a hog weighing in excess of 140 pounds.

2695 § 3.2-2001. Pork Industry Board; composition and appointment of members.

2696 The Pork Industry Board is continued within the Department. The Pork Industry Board shall consist  
 2697 of 12 members appointed by the Governor, subject to confirmation by the General Assembly. Members  
 2698 of the Pork Industry Board shall be selected, as far as possible, so as to give representation to the  
 2699 principal pork-producing areas of Virginia. At least seven of the members shall be pork producers.

2700 § 3.2-2002. Pork Industry Board membership terms.

2701 Terms for appointments to the Pork Industry Board shall be for four years. The Governor shall fill  
 2702 any vacancy occurring before the expiration of any term through appointment of a qualified person for  
 2703 the unexpired term. No member shall be eligible to be appointed for more than two successive terms.

2704 § 3.2-2003. *Pork Industry Board officers and compensation.*

2705 A. *The Pork Industry Board shall elect one of its members as chairman and such other officers as*  
2706 *deemed appropriate.*

2707 B. *Members of the Pork Industry Board shall be reimbursed for all actual expenses incurred*  
2708 *attending meetings of the Pork Industry Board and any related activities as authorized by the Pork*  
2709 *Industry Board.*

2710 § 3.2-2004. *Powers and duties of Pork Industry Board.*

2711 A. *The Pork Industry Board shall administer all funds collected under this chapter.*

2712 B. *The Pork Industry Board shall plan and conduct programs for education and research relating to*  
2713 *the Virginia pork industry, with primary emphasis on programs designed to increase the efficient*  
2714 *production of slaughter hogs and feeder pigs in the Commonwealth.*

2715 C. *The Pork Industry Board may make contracts, expend moneys from the Virginia Pork Industry*  
2716 *Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.*

2717 D. *The Pork Industry Board may cooperate with other state, regional, and national organizations in*  
2718 *research, education, and other means for promoting the Virginia pork industry and may expend moneys*  
2719 *of the Virginia Pork Industry Fund for such purpose.*

2720 E. *The Pork Industry Board may appoint a secretary and such other employees as may be necessary*  
2721 *at salaries to be fixed by the Pork Industry Board subject to the provisions of the Virginia Personnel*  
2722 *Act (§ 2.2-2900 et seq.). All employees of the Pork Industry Board handling money shall be required to*  
2723 *furnish surety bonds in an amount to be fixed by the Pork Industry Board.*

2724 F. *The chairman shall make a report at the annual meeting of the Pork Industry Board and furnish*  
2725 *the members of the Pork Industry Board with a statement of the total receipts and disbursements for the*  
2726 *year. The chairman shall also file a copy of such report and the audit required by § 3.2-2005 with the*  
2727 *Commissioner annually.*

2728 § 3.2-2005. *Virginia Pork Industry Fund; established.*

2729 *There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia*  
2730 *Pork Industry Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of*  
2731 *the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into*  
2732 *the state treasury and credited to the Fund.*

2733 *Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys*  
2734 *remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the*  
2735 *general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set*  
2736 *forth in this chapter, including paying the costs of collecting the tax levied on hogs pursuant to this*  
2737 *chapter, and the administration of this chapter, including payment for personal services, materials, and*  
2738 *supplies necessary to effect the purposes of this chapter. Expenditures and disbursements from the Fund*  
2739 *shall be made by the Pork Industry Board on warrants issued by the Comptroller upon written request*  
2740 *signed by a duly authorized officer of the Pork Industry Board.*

2741 *The Auditor of Public Accounts shall audit all the accounts of the Pork Industry Board as is*  
2742 *provided for in § 30-133.*

2743 § 3.2-2006. *Levy of excise tax.*

2744 *An excise tax of 10 cents (\$0.10) per head shall be levied on all hogs sold in the Commonwealth for*  
2745 *slaughter, and an excise tax of five cents (\$0.05) per head shall be levied on all hogs sold in the*  
2746 *Commonwealth as feeder pigs. For purposes of this tax, a slaughter hog or feeder pig is sold at the*  
2747 *time and place the hog or pig is weighed for purchase and its purchase weight is recorded.*

2748 § 3.2-2007. *Collection and disposition of tax; reports.*

2749 A. *Every processor shall collect the tax on all slaughter hogs purchased by him, other than at a*  
2750 *livestock auction market, and remit such tax to the Tax Commissioner to the credit of the Virginia Pork*  
2751 *Industry Fund.*

2752 B. *Every livestock auction market shall collect the tax on all slaughter hogs and feeder pigs bought*  
2753 *at a livestock auction market and remit it to the Tax Commissioner to the credit of the Virginia Pork*  
2754 *Industry Fund.*

2755 C. *Every first buyer shall collect the tax on other feeder pig sales and remit it to the Tax*  
2756 *Commissioner to the credit of the Virginia Pork Industry Fund.*

2757 D. *Taxes collected between July 1 and December 31 of each year shall be paid to the Tax*  
2758 *Commissioner not later than January 15 of the succeeding year, and taxes collected between January 1*  
2759 *and June 30 shall be paid not later than July 10 of the year in which collected.*

2760 E. *Every processor, livestock auction market, and other first buyers of feeder pigs shall complete*  
2761 *reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner*  
2762 *together with the taxes submitted pursuant to this section, and keep copies of the reports for a period of*  
2763 *not less than three years from the time the report was produced.*

2764 F. *The Tax Commissioner, after consultation with the Virginia Pork Industry Board, may adopt*

- 2765 regulations for the interpretation and enforcement of this tax.
- 2766 G. Any tax that is not paid when due shall be collected pursuant to § 3.2-1102.
- 2767 § 3.2-2008. Records to be kept by processors, livestock auction markets, and other first buyers.
- 2768 Every processor, livestock auction market, and other first buyers of feeder pigs shall keep a complete
- 2769 record of the number of slaughter hogs and feeder pigs subject to tax purchased by him for at least
- 2770 three years. Such record shall be open to the inspection of the Tax Commissioner.
- 2771 § 3.2-2009. Falsification of records; misdemeanor.
- 2772 It is a Class 1 misdemeanor:
- 2773 1. For any person knowingly to report falsely the number of slaughter hogs and feeder pigs subject
- 2774 to tax bought or handled by him during any period.
- 2775 2. For any person to falsify the records of the slaughter hogs and feeder pigs subject to tax bought
- 2776 or handled by him.
- 2777 3. For any person to fail to file the report, or to fail to keep the records as required by this chapter.
- 2778 CHAPTER 21.
- 2779 SHEEP INDUSTRY BOARD.
- 2780 § 3.2-2100. Definitions.
- 2781 As used in this chapter, unless the context requires a different meaning:
- 2782 "Handler" means the operator of a stockyard, livestock dealership, slaughterhouse, packing plant, or
- 2783 livestock auction market, or any other person making a purchase from a sheep producer, at the point
- 2784 where the sheep is sold or traded.
- 2785 "Sheep" means sheep or lambs of all ages.
- 2786 § 3.2-2101. Sheep Industry Board; composition and appointment of members; quorum.
- 2787 The Sheep Industry Board, established by the passage of a referendum held pursuant to Chapter 691
- 2788 of the 1995 Acts of Assembly, is continued within the Department.
- 2789 The Sheep Industry Board shall consist of 12 members representing the sheep industry and industry
- 2790 support services. The Governor shall appoint 12 individuals from nominations submitted by the Virginia
- 2791 Sheep Producers Association, Virginia sheep and wool marketing organizations, or other Virginia farm
- 2792 organizations representing sheep producers. One member shall represent the
- 2793 packing/processing/retailing segment of the industry, one shall represent the Virginia Livestock Markets
- 2794 Association, and one shall represent the purebred segment of the industry. The remaining nine members
- 2795 shall be appointed by the Governor as follows in accordance with § 3.2-2110, with no more than one
- 2796 member appointed per locality: three members who reside in the Southwest District; three members who
- 2797 reside in the Valley District; two members who reside in the Northern District; and one member who
- 2798 resides in the South Central District. In addition, the extension sheep specialist from Virginia
- 2799 Polytechnic Institute and State University and the Commissioner shall serve as nonvoting members.
- 2800 Seven members of the Sheep Industry Board shall constitute a quorum for the transaction of business.
- 2801 § 3.2-2102. Sheep Industry Board membership terms.
- 2802 The terms for appointments to the Sheep Industry Board shall be for three years. Vacancies in
- 2803 memberships shall be filled pursuant to § 3.2-2101. No member shall serve more than two consecutive
- 2804 terms.
- 2805 § 3.2-2103. Sheep Industry Board officers and compensation.
- 2806 A. The Sheep Industry Board shall elect from its membership a chairman and such other officers, as
- 2807 it deems appropriate.
- 2808 B. Sheep Industry Board members not representing agencies of the Commonwealth shall be
- 2809 reimbursed from the Fund for all reasonable and necessary expenses incurred in the performance of
- 2810 their duties as members of the Sheep Industry Board.
- 2811 § 3.2-2104. Powers and duties of Sheep Industry Board.
- 2812 A. The Sheep Industry Board shall be responsible for the promotion and economic development of
- 2813 the sheep industry in the Commonwealth. To accomplish this function the Sheep Industry Board is
- 2814 authorized to:
- 2815 1. Provide funding for predator control;
- 2816 2. Produce economic reports;
- 2817 3. Develop a sheep industry directory;
- 2818 4. Provide funding for educational programs;
- 2819 5. Provide funding for research;
- 2820 6. Engage in media liaison;
- 2821 7. Collect and analyze data on the sheep industry;
- 2822 8. Disseminate industry-related data;
- 2823 9. Enter into contracts and agreements to accomplish the purposes of this chapter; and
- 2824 10. Establish, administer, manage, and make expenditures from the Virginia Sheep Industry
- 2825 Promotion and Development Fund as provided in § 3.2-2111.
- 2826 B. The Sheep Industry Board may increase the original assessment of 50 cents (\$0.50) for each

2827 sheep sold within the Commonwealth no more than 10 cents (\$0.10) per year, up to a maximum  
2828 assessment of \$1 per head.

2829 C. The chairman of the Sheep Industry Board shall make a report at the annual meeting of the  
2830 Sheep Industry Board including a statement of the total receipts and disbursements for the year, and  
2831 shall file a copy of the report with the Commissioner.

2832 § 3.2-2105. Referenda.

2833 The Board, upon petition by at least 10 percent of the members of the sheep industry who voted in  
2834 the preceding referendum or as determined by the Commissioner, may provide for a referendum on the  
2835 continuation of the Sheep Industry Board and the assessment. The cost of conducting such referendum  
2836 shall be from funds paid into the Virginia Sheep Industry Promotion and Development Fund as  
2837 established in § 3.2-2111. Such referendum shall be conducted in the manner provided in this chapter.  
2838 The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

2839 § 3.2-2106. Management of referenda; Commissioner's duties; notice.

2840 A. The Commissioner shall manage any referendum conducted under this chapter, and shall, under  
2841 regulations adopted by the Board, arrange for the use of polling places, if necessary.

2842 B. The Commissioner shall, at least 60 days before the date upon which a referendum is to be held,  
2843 mail notice to the clerk of the circuit court in each locality where those eligible to vote in the  
2844 referendum reside. The clerk of the circuit court shall post the notice and regulations on the front door  
2845 or public bulletin board of the courthouse and certify the posting to the Commissioner. The  
2846 Commissioner shall also give general notice of the referendum in a newspaper of general circulation in  
2847 Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in  
2848 each area where members of the sheep industry reside, at least 60 days prior to the holding of any  
2849 referendum under this chapter.

2850 The notice shall contain the date, hours, voting places, and methods of voting in the referendum; the  
2851 amount of assessment to be collected, means by which such assessment will be collected, and general  
2852 purposes for how the assessments will be used; and the regulations adopted by the Board pursuant to  
2853 § 3.2-112.

2854 C. The Commissioner shall prepare and distribute in advance of the referendum all necessary  
2855 ballots, certificates, and supplies required for the referendum.

2856 D. The Commissioner shall within 10 days after the referendum, canvass and publicly declare the  
2857 results of the referendum, and certify the same to the Governor and the Board.

2858 § 3.2-2107. Question to be printed on ballots.

2859 The question to be printed on the ballots used in any referendum authorized in § 3.2-2105 on the  
2860 continuation of the Sheep Industry Board and assessment shall be as follows:

2861 "Do you favor the continuation of the Sheep Industry Board and the continuation of the levy of an  
2862 assessment of up to \$1 per head for all sheep sold within the Commonwealth?"

2863 \_ Yes  
2864 \_ No."

2865 § 3.2-2108. Persons eligible to vote.

2866 Each member of the Virginia sheep industry who has sold one or more sheep or 50 or more pounds  
2867 of wool within the Commonwealth in the year preceding any referendum shall be eligible to vote in the  
2868 referendum, provided that he certifies that he has conducted such sale. Any person who meets the  
2869 requirements of this section shall be eligible to vote provided that they are a resident of the  
2870 Commonwealth or qualified to do business in the Commonwealth. Any person who is not an individual  
2871 shall vote by its authorized representative.

2872 § 3.2-2109. Referenda results; action of Governor.

2873 If the Governor finds the referendum in order and that at least a simple majority of those voting are  
2874 in opposition to the continuation of Sheep Industry Board and the assessment for the purpose of  
2875 conducting programs in market development, predator control, education, research, and promotion of  
2876 the sheep industry, he shall so proclaim and upon such proclamation the Sheep Industry Board and the  
2877 assessment shall be discontinued. If the Governor finds that at least a simple majority of those voting  
2878 are in favor of the continuation of the Sheep Industry Board and the assessment, he shall not so  
2879 proclaim.

2880 § 3.2-2110. Production districts designated.

2881 The following districts are designated for the purposes of this chapter:

2882 Southwest District: Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson,  
2883 Henry, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise,  
2884 and Wythe Counties.

2885 Valley District: Alleghany, Augusta, Bath, Botetourt, Highland, Page, Rockbridge, Rockingham, and  
2886 Shenandoah Counties.

2887 Northern District: Albemarle, Caroline, Clark, Culpeper, Fairfax, Fauquier, Fluvanna, Fredrick,

2888 Goochland, Greene, Hanover, King George, Loudoun, Louisa, Madison, Nelson, Orange, Prince  
2889 William, Rappahannock, Spotsylvania, Stafford, and Warren Counties.

2890 South Central District: Accomack, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham,  
2891 Campbell, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Gloucester, Greensville,  
2892 Isle of Wight, James City, King and Queen, King William, Lancaster, Lunenburg, Mathews,  
2893 Mecklenburg, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Pittsylvania, Powhatan,  
2894 Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York  
2895 Counties; and the Cities of Chesapeake, Suffolk, and Virginia Beach.

2896 § 3.2-2111. Virginia Sheep Industry Promotion and Development Fund established.

2897 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
2898 Sheep Industry Promotion and Development Fund, hereafter referred to as "the Fund." The Fund shall  
2899 be established on the books of the Comptroller. All assessments paid pursuant to § 3.2-2112 shall be  
2900 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall  
2901 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,  
2902 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys  
2903 in the Fund shall be used solely for the purpose of carrying out the provisions of this chapter.  
2904 Expenditures and disbursements from the Fund shall be made by the Sheep Industry Board on warrants  
2905 issued by the Comptroller upon written request by a duly authorized officer of the Sheep Industry  
2906 Board.

2907 The Auditor for Public Accounts shall audit all the accounts of the Sheep Industry Board as provided  
2908 in § 30-133.

2909 § 3.2-2112. Collection and disposition of assessment by handler; reports.

2910 A. Every handler shall deduct the assessment authorized under this chapter from the proceeds of sale  
2911 owed by him to the respective owners for all sheep sold in the Commonwealth. Any handler purchasing  
2912 sheep in the Commonwealth for resale within 10 days shall be exempt from the assessment on the  
2913 subsequent sale. The handler shall remit the assessment to the Tax Commissioner on or before the last  
2914 day of the month following the end of each calendar quarter.

2915 B. Every handler shall complete reports on forms furnished by the Tax Commissioner, submit such  
2916 reports to the Tax Commissioner along with the assessments submitted pursuant to subsection A, and  
2917 keep copies of the reports for a period of not less than three years from the time the report was  
2918 produced. Each report shall include a statement of the number of sheep that have been handled; the  
2919 amount of money that has been collected; and any other information deemed necessary by the Tax  
2920 Commissioner to carry out his duties under this chapter. Notwithstanding the provisions of § 58.1-3,  
2921 upon request, the Tax Commissioner is authorized to provide the Sheep Industry Board with a list of  
2922 assessment payers and amounts paid.

2923 C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

2924 § 3.2-2113. Records to be kept by handler.

2925 Every handler shall keep a complete record of the number of sheep subject to payment bought by  
2926 him for a period of not less than three years. Such records shall be open for inspection by the Tax  
2927 Commissioner, and shall be established and maintained as required by the Tax Commissioner.

2928 § 3.2-2114. Falsification of records; misdemeanor.

2929 It is a Class 1 misdemeanor:

2930 1. For any handler to fail to submit to the Tax Commissioner any report required in this chapter  
2931 within 60 days from the time such report is required to be submitted.

2932 2. For any handler knowingly to report falsely to the Tax Commissioner the number of taxable sheep  
2933 handled by him during any period or to falsify the records.

2934 CHAPTER 22.  
2935 SMALL GRAINS BOARD.

2936 § 3.2-2200. Definitions.

2937 As used in this chapter, unless the context otherwise requires:

2938 "Country buyer" means any person who buys small grains from a producer.

2939 "Exporter" means any person offering small grains for export sale.

2940 "Handler" means any person who purchases small grains from a producer and any producer who  
2941 transports and sells his own small grains out of state. Handler also means any processor, dealer,  
2942 shipper, country buyer, exporter, or any other business entity that purchases small grains from a  
2943 producer. Handler shall also mean any person buying, accepting for shipment, or otherwise acquiring  
2944 property in small grains from a producer, and shall include a mortgagee, pledgee, lienor, or other  
2945 person having a claim against the producer when the actual or constructive possession of such small  
2946 grains is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

2947 "Processor" means any person who changes the physical form or characteristic of small grains in  
2948 preparation for sale.

2949 "Producer" means any person who has grown and sold small grains in the Commonwealth in the



2950 preceding three years.

2951 "Seedsman" means any person who offers small grains seeds for sale.

2952 "Small grains" means barley, oats, rye, or wheat.

2953 § 3.2-2201. Small Grains Board; composition and appointment of members.

2954 The Small Grains Board, established by the passage of a referendum held pursuant to Chapter 587  
2955 of the 1991 Acts of Assembly, is continued within the Department. The Small Grains Board shall be  
2956 composed of 11 members appointed by the Governor from nominations by the Virginia Grain Producers  
2957 Association or other organizations representing small grain producers, the appointments to be subject to  
2958 confirmation by the General Assembly. The Virginia Grain Producers Association shall nominate at  
2959 least two producers from each production area of small grains. The Governor shall appoint at least one  
2960 producer from each production area and the membership of the Small Grains Board shall be composed  
2961 of a majority of producers. The Governor shall appoint one member, if available, from each of the  
2962 following classifications: seedsman, processor, country buyer, and exporter.

2963 § 3.2-2202. Small Grains Board membership terms.

2964 The terms for appointments to the Small Grains Board shall be for three years. The Governor shall  
2965 fill any vacancy occurring before the expiration of any term for the unexpired term. If possible, such  
2966 vacancies shall be filled from the production area or classification from which the vacancy occurred as  
2967 described in § 3.2-2210.

2968 § 3.2-2203. Small Grains Board officers and compensation.

2969 A. The Small Grains Board shall elect a chairman and such other officers as deemed appropriate.

2970 B. Members of the Small Grains Board shall not receive compensation for attendance at meetings of  
2971 the Small Grains Board, but shall be reimbursed for actual and necessary expenses incurred in the  
2972 performance of their duties.

2973 § 3.2-2204. Powers and duties of Small Grains Board.

2974 A. The Small Grains Board shall have charge of the management and expenditure of the Virginia  
2975 Small Grains Fund established in the state treasury.

2976 B. The Small Grains Board may expend funds to provide for programs of market development,  
2977 education, publicity, research, and the promotion of the sale and use of small grains; to manage the  
2978 funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical,  
2979 professional, and other assistants as may be required; and to contract for market development, publicity,  
2980 research, advertising, and other promotional services.

2981 C. The Small Grains Board may establish an executive committee and charge it with such powers,  
2982 duties, and functions as deemed proper.

2983 D. The Small Grains Board shall not enter into an agreement with the Federal Commodity Credit  
2984 Corporation to collect the specified assessment on all small grains pledged as collateral for a  
2985 commodity credit corporation price support loan or purchase by the Federal Commodity Credit  
2986 Corporation under its loan or purchase programs.

2987 E. The chairman of the Small Grains Board shall make a report at the annual meeting of the  
2988 Virginia Grain Producers Association including a statement of the total receipts and disbursements for  
2989 the year. He shall file a copy of the report with the Commissioner and the members of the Small Grains  
2990 Board.

2991 § 3.2-2205. Referenda.

2992 The Board, upon petition by a group of small grains producers representing at least 10 percent of  
2993 the number of producers, as determined by the Commissioner, may provide for a referendum on the  
2994 continuation of the assessment. The Board shall not act on such a petition for conducting such a  
2995 referendum until at least five years have passed since the last referendum. If the Governor determines  
2996 that a simple majority is not in favor of the assessment, the Board shall hold no new referendum for at  
2997 least one year after the Governor has declared his findings, but at the expiration of one year and upon  
2998 petition by 10 percent of the Commonwealth's small grains producers that voted in the most recent  
2999 referendum, the Board may provide for a referendum. The cost of conducting any referendum under this  
3000 section shall be paid from funds paid into the Virginia Small Grains Fund as defined in § 3.2-2211. The  
3001 Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

3002 § 3.2-2206. Management of referenda; Commissioner's duties; notice.

3003 A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this  
3004 chapter, and shall, under regulations adopted by the Board, arrange for the use of polling places if  
3005 necessary.

3006 B. The Commissioner shall, 60 days before the date upon which a referendum is to be held, mail  
3007 notice to the clerk of the circuit court in each locality where small grains are produced. The clerk of  
3008 the circuit court shall post the notice and regulations on the front door or public bulletin board of the  
3009 courthouse and certify the posting to the Commissioner. The Commissioner shall, at least 60 days prior  
3010 to the holding of any referendum under this chapter, give general notice of the referendum in a

3011 newspaper of general circulation in Richmond, Virginia, and send a notice of the referendum to a  
 3012 newspaper of general circulation for each area where small grains are produced.

3013 The notice shall contain the date, hours, polling place, and method of voting in such referendum, the  
 3014 amount of assessment to be collected, the means by which such assessment shall be collected, the  
 3015 general purposes for which the assessments will be used, and the regulations adopted by the Board  
 3016 pursuant to § 3.2-112.

3017 C. The Commissioner shall prepare and distribute in advance of the referendum all necessary  
 3018 ballots, certificates, and supplies required for the referendum.

3019 D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the  
 3020 results thereof and certify the same to the Governor and the Board.

3021 § 3.2-2207. Question to be printed on ballots.

3022 The question to be printed on the ballots used in any referendum held pursuant to this chapter shall  
 3023 be as follows:

3024 "Do you favor additional market development, education, publicity, research, and the promotion of  
 3025 the sale and use of small grains and continuation of the levy of an assessment of one-half of one  
 3026 percent of the selling price per bushel in accordance with the provisions of the Small Grains Board  
 3027 law?

3028 \_ Yes

3029 \_ No."

3030 § 3.2-2208. Persons eligible to vote.

3031 Each producer who sold small grains in two of the past three years next preceding the date of the  
 3032 referendum held pursuant to this chapter shall be eligible to vote in the referendum, provided that he  
 3033 shall certify sale and point of sale on forms approved by the Board. Any person meeting such  
 3034 requirements shall be eligible to vote in the referendum, but no person shall be required to be a  
 3035 qualified voter in other respects. Any person who is not an individual shall vote by its authorized  
 3036 representative.

3037 § 3.2-2209. Referenda results; action of Governor.

3038 If the Governor finds any referendum in order and that at least a simple majority of those voting are  
 3039 in opposition to the continuation of the assessment on small grains, he shall so proclaim and upon such  
 3040 proclamation the assessment on small grains will be discontinued. If the Governor finds that at least a  
 3041 simple majority of those voting are in favor of the continuation of the assessment on small grains, the  
 3042 Governor shall not so proclaim.

3043 § 3.2-2210. Production areas designated.

3044 The following production areas are designated for the purposes of this chapter:

3045 Area I: the Counties of Accomack and Northampton; City of Virginia Beach;

3046 Area II: the Counties of Stafford, King George, Westmoreland, Northumberland, Richmond, and  
 3047 Lancaster;

3048 Area III: the Counties of Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and  
 3049 Queen, King William, and Orange;

3050 Area IV: the Counties of Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City,  
 3051 James City, York, Powhatan, Cumberland, Buckingham, Appomattox, Amelia, Chesterfield, Prince  
 3052 George, Dinwiddie, and Nottoway;

3053 Area V: the Cities of Chesapeake and Suffolk; the Counties of Isle of Wight, Southampton, Surry,  
 3054 and Sussex;

3055 Area VI: the Counties of Greensville, Brunswick, Mecklenburg, Halifax, Charlotte, Lunenburg, Prince  
 3056 Edward, Campbell, and Pittsylvania;

3057 Area VII: the Counties of Albemarle, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Bland,  
 3058 Botetourt, Buchanan, Carroll, Clarke, Craig, Culpeper, Dickenson, Fairfax, Fauquier, Floyd, Franklin,  
 3059 Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson,  
 3060 Page, Patrick, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell,  
 3061 Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

3062 § 3.2-2211. Virginia Small Grains Fund established.

3063 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
 3064 Small Grains Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of  
 3065 the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into  
 3066 the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the  
 3067 Fund and be credited to it. Any moneys remaining the Fund, including interest thereon, at the end of  
 3068 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund  
 3069 shall be used solely for the purposes set forth in this chapter.

3070 Expenditures and disbursements from the Fund shall be made by the Small Grains Board on  
 3071 warrants issued by the Comptroller upon written request signed by the duly authorized officer of the  
 3072 Small Grains Board.

3073 *In carrying out the purposes of this chapter, the Small Grains Board may cooperate with other state,*  
 3074 *regional, national, and international agricultural organizations in market development, education,*  
 3075 *publicity, research, and the promotion of the sale and use of small grains. The proceeds from such*  
 3076 *activities shall be promptly paid into the Virginia Small Grains Fund.*

3077 *The Auditor of Public Accounts shall audit all the accounts of the Small Grains Board as provided*  
 3078 *for in § 30-133.*

3079 *Money from the Fund shall not be diverted or expended for any purpose other than those set forth in*  
 3080 *this chapter unless authorized by a specific Act of Assembly.*

3081 *§ 3.2-2212. Collection and disposition of assessment by handler; reports.*

3082 *A. Every handler shall deduct from payments made to the producer for small grains the amount of*  
 3083 *the assessment levied thereon and shall remit such assessment to the Tax Commissioner pursuant to this*  
 3084 *chapter.*

3085 *B. A report to the Tax Commissioner shall be on forms prescribed and furnished by the Tax*  
 3086 *Commissioner; shall be a statement of the gross volume of small grains handled by the handler; and*  
 3087 *shall be filed with the Tax Commissioner covering small grains handled during the preceding period, as*  
 3088 *set forth by the Tax Commissioner. The Tax Commissioner shall set forth the filing date or dates for*  
 3089 *reports and assessments and the period to be covered after consultation with the Virginia Small Grains*  
 3090 *Association and the Small Grains Board. The assessment levied on small grains shall be due and*  
 3091 *payable by the handler on the same day as the report is due. The assessment shall be paid to the Tax*  
 3092 *Commissioner and be promptly paid into the state treasury to the credit of the Virginia Small Grains*  
 3093 *Fund. The Tax Commissioner shall not assess a fee in the collection of the fee assessment. The Tax*  
 3094 *Commissioner shall provide annually during the first calendar quarter of each year a listing of all*  
 3095 *handlers who paid an assessment during the previous calendar year.*

3096 *C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

3097 *§ 3.2-2213. Records to be kept by handlers.*

3098 *Every handler shall keep a complete record of the small grains handled by him for a period of not*  
 3099 *less than three years from the time the small grains were handled. Such records shall be open to the*  
 3100 *inspection of the Tax Commissioner, and shall be established and maintained as required by the Tax*  
 3101 *Commissioner.*

3102 *§ 3.2-2214. Falsification of records; misdemeanor.*

3103 *It is a Class 1 misdemeanor:*

3104 *1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of small grains*  
 3105 *handled by him during any period.*

3106 *2. For any handler to falsify the records of the small grains handled by him.*

3107 *3. For any handler to fail to preserve the records of the small grains handled for a period of three*  
 3108 *years from the time such small grains were handled.*

3109 *CHAPTER 23.*

3110 *SOYBEAN BOARD.*

3111 *§ 3.2-2300. Definitions.*

3112 *"Country buyer" means any person who buys soybeans from a producer.*

3113 *"Exporter" means any person offering soybeans for export sale.*

3114 *"Handler" means any processor, dealer, shipper, exporter, or any other business entity that*  
 3115 *purchases soybeans from a producer. The term shall also mean any person buying, accepting for*  
 3116 *shipment, or otherwise acquiring property in soybeans from a producer, and shall include a mortgagee,*  
 3117 *pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual*  
 3118 *or constructive possession of such soybeans is taken as part payment or in satisfaction of such*  
 3119 *mortgage, pledge, lien, or claim. The term shall also mean any producer that transports and sells his*  
 3120 *soybeans out of state.*

3121 *"Processor" means any person who changes the physical form or characteristic of soybeans for the*  
 3122 *purpose of preparing them for sale.*

3123 *"Producer" means any person who grew soybeans in the Commonwealth and sold soybeans during*  
 3124 *the preceding three years.*

3125 *"Seedsman" means any person or firm who offers soybean seeds for sale.*

3126 *§ 3.2-2301. Soybean Board; composition and appointment of members.*

3127 *The Soybean Board, established by the passage of a referendum held pursuant to Chapter 431 of the*  
 3128 *1970 Acts of Assembly, is continued within the Department. The Soybean Board shall be composed of*  
 3129 *11 members appointed by the Governor from nominations by the several producer organizations*  
 3130 *representing soybean producers, the appointments to be subject to confirmation by the General*  
 3131 *Assembly. The several producer organizations representing soybean producers shall nominate at least*  
 3132 *two producers from each production area of soybeans. The Governor shall appoint at least one*  
 3133 *producer from each production area as described in § 3.2-2310, and the membership of the Soybean*

3134 Board shall always be composed of a majority of producers. The Governor shall appoint one member, if  
3135 available, from each of the following classifications: seedsman, producer, processor, country buyer, and  
3136 exporter. Such appointments shall be made from nominations from the several producer organizations  
3137 representing soybean producers.

3138 § 3.2-2302. Soybean Board membership terms.

3139 The terms for appointments to the Soybean Board shall be for three years. The Governor shall fill  
3140 any vacancy occurring before the expiration of any term for the unexpired term. If possible, vacancies  
3141 shall be filled from the production area or classification from which the vacancy occurred from  
3142 nominations as described § 3.2-2301.

3143 § 3.2-2303. Soybean Board officers and compensation.

3144 A. The Soybean Board shall elect a chairman and such other officers as deemed appropriate.

3145 B. Members of the Soybean Board shall not receive compensation for attendance at meetings of the  
3146 Soybean Board, but shall be reimbursed for actual expenses incurred in such attendance.

3147 § 3.2-2304. Powers and duties of Soybean Board.

3148 A. The Soybean Board shall have charge of the management and expenditure of the Virginia  
3149 Soybean Fund established in the state treasury.

3150 B. The Soybean Board may expend funds to provide for programs of research, education, publicity,  
3151 and the promotion of the sale and use of soybeans; to manage the funds so as to accumulate a reserve  
3152 for contingencies; to establish an office and employ such technical, professional, and other assistants as  
3153 may be required; and to contract for research, publicity, advertising, and other promotional services.

3154 C. The Soybean Board may establish an executive committee and charge it with powers, duties, and  
3155 functions as is deemed proper.

3156 D. The Soybean Board may enter into an agreement with the Federal Commodity Credit Corporation  
3157 to collect the specified assessment on all soybeans pledged as collateral for a commodity credit  
3158 corporation price support loan or purchase by the Federal Commodity Credit Corporation under its  
3159 loan or purchase program.

3160 E. The chairman of the Soybean Board shall make an annual report to the Soybean Board including  
3161 a statement of the total receipts and disbursements for the year, and shall file a copy of such report  
3162 with the Commissioner.

3163 § 3.2-2305. Referenda.

3164 Every five years from the date of the imposition of the tax assessment on soybeans, another  
3165 referendum shall be held to determine whether the assessment for research, education, publicity, and  
3166 promotion of the sale and use of soybeans shall be continued. The Board, upon petition by a group of  
3167 soybean producers representing at least 33 percent of the Commonwealth's production, as determined by  
3168 the Commissioner, may provide for an advisory referendum on the continuation of the assessment. Upon  
3169 finding that sufficient interest exists among the producers of soybeans in the Commonwealth to justify a  
3170 referendum, the Board shall authorize the holding of a referendum. The cost of conducting any such  
3171 referendum as above prescribed shall come from funds paid into the Virginia Soybean Fund. The Board  
3172 shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

3173 § 3.2-2306. Management of referenda; Commissioner's duties; notice.

3174 A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

3175 B. The Commissioner shall, 60 days before the date upon which a referendum is to be held, mail  
3176 notice to the clerk of the circuit court in each locality where soybeans are produced. The clerk of the  
3177 court shall post the notice on the front door or public bulletin board of the courthouse and certify the  
3178 posting to the Commissioner. The Board shall publish notice of the referendum in each newspaper of  
3179 general circulation in the counties where the referendum is to be held at least 60 days before the  
3180 holding of any referendum under this chapter. The notice shall contain the date, hours, and polling  
3181 places or other ways for voting in such referendum, the amount of the assessment to be collected, the  
3182 sources thereof, the means by which the sum shall be collected, and the general purposes for how the  
3183 funds will be used.

3184 C. The Commissioner shall prepare and distribute in advance of the referendum all necessary  
3185 ballots, certificates, and supplies required for the referendum and shall, under regulations adopted by  
3186 the Board, arrange for the use of polling places, if necessary.

3187 D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the  
3188 results thereof and certify the same to the Governor and the Board.

3189 § 3.2-2307. Question to be printed on ballots.

3190 The question to be printed on the ballots used in a referendum held pursuant to this chapter shall be  
3191 as follows:

3192 "Do you favor additional research, education, publicity and the promotion of the sale and use of  
3193 soybeans and the continuation of the levy of an assessment of two cents (\$0.02) per bushel in  
3194 accordance with the provisions of the Soybean Board?"

3195 \_ Yes

- 3196 \_ No."  
 3197 § 3.2-2308. *Persons eligible to vote.*  
 3198 Each producer who sold soybeans during the past three years next preceding the date of the  
 3199 referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he  
 3200 shall so certify on forms that shall be prepared by the Board. Any person meeting such requirements  
 3201 shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in  
 3202 other respects.  
 3203 § 3.2-2309. *Referenda results; action of Governor.*  
 3204 If the Governor finds any referendum in order and that at least 60 percent of those voting are in  
 3205 opposition to the continuation of the assessment on soybeans, he shall so proclaim and upon such  
 3206 proclamation the assessment on soybeans will be discontinued. If the Governor finds that at least 60  
 3207 percent of those voting are in favor of the continuation of the assessment on soybeans, the Governor  
 3208 shall not so proclaim.  
 3209 § 3.2-2310. *Production Areas designated.*  
 3210 The following production areas are designated for the purposes of this chapter:  
 3211 Area I: Accomack and Northampton Counties;  
 3212 Area II: Stafford, King George, Westmoreland, Northumberland, Richmond, and Lancaster Counties;  
 3213 Area III: Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and Queen, and King  
 3214 William Counties;  
 3215 Area IV: Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City, James City, and  
 3216 York Counties;  
 3217 Area V: the Cities of Virginia Beach, Chesapeake, and Suffolk;  
 3218 Area VI: Chesterfield, Dinwiddie, Prince George, Surry, Sussex, Isle of Wight, Southampton,  
 3219 Greenville, and Brunswick Counties;  
 3220 Area VII: Buckingham, Cumberland, Powhatan, Amelia, Prince Edward, Appomattox, Campbell,  
 3221 Charlotte, Lunenburg, Nottoway, Mecklenburg, Halifax, Pittsylvania, and Henry Counties.  
 3222 § 3.2-2311. *Virginia Soybean Fund established.*  
 3223 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
 3224 Soybean Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the  
 3225 Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the  
 3226 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the  
 3227 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of  
 3228 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund  
 3229 shall be used solely for the purposes set forth in this chapter.  
 3230 In carrying out the purposes of this chapter, the Soybean Board may cooperate with other state,  
 3231 regional, national, and international agricultural organizations in research, education, publicity, and the  
 3232 promotion of the sale and use of soybeans. The Soybean Board may sell printed materials, rent exhibit  
 3233 space at meetings, and engage in any type of ethical revenue-producing activity to defray the costs of  
 3234 Soybean Board programs. The proceeds from such activities shall be promptly paid into the Virginia  
 3235 Soybean Fund.  
 3236 Expenditures and disbursements from the Fund shall be made by the Soybean Board on warrants  
 3237 issued by the Comptroller upon written request signed by the duly authorized officer of the Soybean  
 3238 Board.  
 3239 The Auditor of Public Accounts shall audit all the accounts of the Soybean Board as is provided for  
 3240 in § 30-133.  
 3241 § 3.2-2312. *Collection and disposition of assessment by handler; reports.*  
 3242 A. Every handler shall deduct from payments made to the producer for soybeans an assessment of  
 3243 two cents (\$0.02) per bushel and shall remit such assessment to the Tax Commissioner pursuant to this  
 3244 chapter. The handler shall also deduct from payments made to the producer for soybeans any national  
 3245 assessment that shall be approved under federal law to supersede the state law and shall remit such  
 3246 assessment to the Tax Commissioner pursuant to this chapter. The Tax Commissioner shall provide to  
 3247 the Soybean Board copies of excise tax returns and other information as may be necessary for the  
 3248 Soybean Board to comply with Virginia and federal soybean assessment programs.  
 3249 B. A report to the Tax Commissioner shall be on forms prescribed and furnished by the Tax  
 3250 Commissioner, and shall be a statement of the gross volume of soybeans handled by the handler and  
 3251 shall be filed with the Tax Commissioner by the date or dates as set forth by the Tax Commissioner  
 3252 covering soybeans handled during the preceding period, as set forth by the Tax Commissioner. The Tax  
 3253 Commissioner shall set forth the filing date or dates for reports and assessments and the period or  
 3254 periods to be covered after consultation with the Virginia Soybean Association and Soybean Board. The  
 3255 assessment levied on soybeans shall be due by the handler on the same day as the report is due. The  
 3256 assessment shall be paid to the Tax Commissioner and be promptly paid into the state treasury to the

- 3257 *credit of the Virginia Soybean Fund.*  
 3258 *C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*  
 3259 *§ 3.2-2313. Records to be kept by handlers.*  
 3260 *The handler shall keep a complete record of the soybeans handled by him for a period of not less*  
 3261 *than three years from the time the soybeans were handled. Such records shall be open to the inspection*  
 3262 *of the Tax Commissioner and shall be established and maintained as required by the Tax Commissioner.*  
 3263 *§ 3.2-2314. Falsification of records; misdemeanor.*  
 3264 *It is a Class 1 misdemeanor:*  
 3265 *1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of soybeans*  
 3266 *handled by him during any period.*  
 3267 *2. For any handler to falsify the records of the soybeans handled by him.*  
 3268 *3. For any handler to fail to preserve the records of the soybeans handled by him for at least three*  
 3269 *years from the time such soybeans are handled.*

3270 **CHAPTER 24.**

3271 **BRIGHT FLUE-CURED TOBACCO BOARD.**

- 3272 *§ 3.2-2400. Definitions.*  
 3273 *As used in this chapter, unless the context requires a different meaning:*  
 3274 *"Grower" means any person actually engaged in the growing and producing of bright flue-cured*  
 3275 *tobacco.*  
 3276 *"Handler" means any manufacturer, dealer, processor, or any other business entity that purchases*  
 3277 *tobacco directly from the grower.*  
 3278 *"Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.*  
 3279 *§ 3.2-2401. Bright Flue-Cured Tobacco Board; composition and appointment of members.*  
 3280 *The Bright Flue-Cured Tobacco Board is continued within the Department. The Bright Flue-Cured*  
 3281 *Tobacco Board shall consist of seven members with one member from each production area of*  
 3282 *flue-cured tobacco. The Governor shall appoint members from nominations made by the Flue-Cured*  
 3283 *Tobacco Committee of the Virginia Farm Bureau Federation and other tobacco grower organizations*  
 3284 *existing in tobacco-producing counties. Each member shall be a citizen of the Commonwealth and*  
 3285 *engaged in producing tobacco in the Commonwealth.*  
 3286 *§ 3.2-2402. Production areas designated.*  
 3287 *The following production areas are designated for the purposes of this chapter:*  
 3288 *Area I - Pittsylvania County;*  
 3289 *Area II - Counties of Pittsylvania, Henry, Patrick, and Carroll;*  
 3290 *Area III - Halifax County;*  
 3291 *Area IV - Counties of Franklin, Bedford, Campbell, Appomattox, and Charlotte;*  
 3292 *Area V - Mecklenburg County;*  
 3293 *Area VI - Counties of Lunenburg, Prince Edward, Nottoway, Cumberland, Amelia, Powhatan, and*  
 3294 *Chesterfield; and*  
 3295 *Area VII - Counties of Brunswick, Dinwiddie, Greensville, Prince George, Sussex, and Southampton*  
 3296 *and the City of Suffolk.*  
 3297 *§ 3.2-2403. Bright Flue-Cured Tobacco Board membership terms.*  
 3298 *The terms for appointments to the Bright Flue-Cured Tobacco Board shall be for four years. The*  
 3299 *Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.*  
 3300 *§ 3.2-2404. Bright Flue-Cured Tobacco Board officers and compensation.*  
 3301 *A. The Bright Flue-Cured Tobacco Board shall elect one of its members as chairman and such other*  
 3302 *officers as deemed appropriate.*  
 3303 *B. The members of the Bright Flue-Cured Tobacco Board shall receive a per diem of \$10 for each*  
 3304 *day spent in attendance on meetings of the Bright Flue-Cured Tobacco Board and shall be reimbursed*  
 3305 *for actual expenses incurred in such attendance.*  
 3306 *§ 3.2-2405. Powers and duties of Bright Flue-Cured Tobacco Board.*  
 3307 *A. All funds levied and collected under this chapter shall be administered by the Bright Flue-Cured*  
 3308 *Tobacco Board.*  
 3309 *B. The Bright Flue-Cured Tobacco Board shall plan and conduct campaigns of education,*  
 3310 *advertising, publicity, sales promotion, and research to increase the demand for, and the consumption*  
 3311 *of, Virginia bright flue-cured tobacco.*  
 3312 *C. The Bright Flue-Cured Tobacco Board may make contracts, expend moneys of the Bright*  
 3313 *Flue-Cured Tobacco Promotion Fund, and do whatever else may be necessary to effectuate the purposes*  
 3314 *of this chapter.*  
 3315 *D. The Bright Flue-Cured Tobacco Board may cooperate with other state, regional, and national*  
 3316 *agricultural organizations in research, advertising, publicity, education, and other means of promoting*  
 3317 *the sale, use, and exportation of bright flue-cured tobacco, and expend moneys of the Bright Flue-Cured*  
 3318 *Tobacco Promotion Fund for such purposes.*

3319 E. The Bright Flue-Cured Tobacco Board may appoint a secretary and such other employees as may  
 3320 be necessary, at salaries to be fixed by the Bright Flue-Cured Tobacco Board, subject to the provisions  
 3321 of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this chapter shall  
 3322 be required to furnish surety bonds.

3323 F. The Chairman shall make a report at the annual meeting of the Bright Flue-Cured Tobacco  
 3324 Board and furnish members with a statement of the total receipts and disbursements for the year. He  
 3325 shall file a copy of such report and the audit required by § 3.2-2407 with the Commissioner.

3326 § 3.2-2406. Levy of excise tax.

3327 An excise tax of 20 cents (\$.20) per 100 pounds is levied on all bright flue-cured tobacco that is  
 3328 harvested in the Commonwealth and sold by the grower, and shall be payable by the grower.

3329 § 3.2-2407. Bright Flue-Cured Tobacco Promotion Fund established.

3330 There is hereby created in the state treasury a special nonreverting fund to be known as the Bright  
 3331 Flue-Cured Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be  
 3332 established on the books of the Comptroller. All moneys levied and collected under this chapter shall be  
 3333 paid into the state treasury and credited to the Fund.

3334 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
 3335 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
 3336 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
 3337 carrying out the administration and enforcement of this chapter, including the collection of taxes, the  
 3338 payment of personal services and expenses of employees and agents of the Bright Flue-Cured Tobacco  
 3339 Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of  
 3340 this chapter. Expenditures and disbursements from the Fund shall be made by the Bright Flue-Cured  
 3341 Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized  
 3342 officer of the Bright Flue-Cured Tobacco Board.

3343 The Auditor of Public Accounts shall audit all the accounts of the Bright Flue-Cured Tobacco Board  
 3344 as is provided for in § 30-133.

3345 § 3.2-2408. Collection and disposition of tax; reports.

3346 Every grower shall pay the excise tax on bright flue-cured tobacco to the warehouse or handler  
 3347 where and when the tobacco is first sold. Each warehouse or handler is designated an agent of the  
 3348 Department for the purpose of collecting such excise tax. The tax shall be paid to the Department, to  
 3349 the credit of the Bright Flue-Cured Tobacco Board, on or before the 10th day of the month following its  
 3350 collection, and promptly paid into the state treasury to the credit of the Bright Flue-Cured Tobacco  
 3351 Promotion Fund.

3352 § 3.2-2409. Records to be kept by warehouse and handler.

3353 Each warehouse or handler shall keep a complete record of the excise tax collected by him and shall  
 3354 preserve such record for a period of not less than three years from the time of collection. Such record  
 3355 shall be open to the inspection of the Bright Flue-Cured Tobacco Board and its duly authorized agents.

3356 § 3.2-2410. Collection of unpaid excise tax and interest thereon.

3357 If the tax imposed by this chapter is not paid when due or any funds collected by a warehouse or  
 3358 handler are not remitted to the Bright Flue-Cured Tobacco Board as required in this chapter, the  
 3359 amount due shall bear interest at the rate of one percent per month from the due date until payment. If  
 3360 any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected  
 3361 to the Bright Flue-Cured Tobacco Board, the amount shall be collected by civil action in the name of  
 3362 the Commonwealth at the relation of the Bright Flue-Cured Tobacco Board, and the person adjudged in  
 3363 default shall pay the cost of such action. The Attorney General, at the request of the Bright Flue-Cured  
 3364 Tobacco Board, shall institute action for the collection of the amount of any tax past due under this  
 3365 chapter, including interest thereon.

3366 § 3.2-2411. Violation a misdemeanor.

3367 It is a Class 1 misdemeanor for any person knowingly to violate any provision of this chapter.

3368 CHAPTER 25.

3369 DARK-FIRED TOBACCO BOARD.

3370 § 3.2-2500. Definitions.

3371 As used in this chapter, unless the context requires a different meaning:

3372 "Grower" means any person actually engaged in the growing and producing of type 21 dark-fired  
 3373 tobacco.

3374 "Handler" means any manufacturer, dealer, processor, or any other business entity that purchases  
 3375 tobacco directly from the grower.

3376 "Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.

3377 § 3.2-2501. Dark-Fired Tobacco Board; composition and appointment of members.

3378 The Dark-Fired Tobacco Board is continued within the Department. The Dark-Fired Tobacco Board  
 3379 shall consist of five members representing as nearly as possible each important type 21 dark-fired

3380 tobacco-producing section in the Commonwealth. The Governor shall be guided in his appointments to  
3381 the Dark-Fired Tobacco Board by the recommendations of tobacco growers' organizations existing in  
3382 tobacco-producing counties. Each member shall be a citizen of the Commonwealth and engaged in  
3383 producing tobacco in the Commonwealth.

3384 § 3.2-2502. Dark-Fired Tobacco Board membership terms.

3385 The terms for appointments to the Dark-Fired Tobacco Board shall be for four years. The Governor  
3386 shall fill any vacancy occurring before the expiration of any term for the unexpired term.

3387 § 3.2-2503. Dark-Fired Tobacco Board officers and compensation.

3388 A. The Dark-Fired Tobacco Board shall elect one of its members as chairman and such other  
3389 officers as deemed appropriate.

3390 B. Members of the Dark-Fired Tobacco Board shall receive a per diem of \$10, for each day spent in  
3391 attendance at meetings of the Dark-Fired Tobacco Board, and shall be reimbursed for actual expenses  
3392 incurred in attending such meetings.

3393 § 3.2-2504. Powers and duties of Dark-Fired Tobacco Board.

3394 A. All funds levied and collected under this chapter shall be administered by the Dark-Fired Tobacco  
3395 Board.

3396 B. The Dark-Fired Tobacco Board shall plan and conduct campaigns of education, advertising,  
3397 publicity, sales promotion, and research for the purpose of increasing the demand for, and the  
3398 consumption of, type 21 dark-fired tobacco.

3399 C. The Dark-Fired Tobacco Board may make contracts, expend moneys of the Virginia Dark-Fired  
3400 Tobacco Promotion Fund, and do whatever else may be necessary to effectuate the purposes of this  
3401 chapter.

3402 D. The Dark-Fired Tobacco Board may cooperate with other state, regional, and national  
3403 agricultural organizations in research, advertising, publicity, education, and other means of promoting  
3404 the sale, use, and exportation of type 21 dark-fired tobacco, and may expend moneys of the Virginia  
3405 Dark-Fired Tobacco Promotion Fund for such purposes.

3406 E. The Dark-Fired Tobacco Board may appoint a secretary and other employees as may be  
3407 necessary, at salaries to be fixed by the Dark-Fired Tobacco Board, subject to the provisions of the  
3408 Virginia Personnel Act (§ 2.2-2900 et seq.). All employees handling money under this chapter shall be  
3409 required to furnish surety bonds.

3410 F. The chairman shall make a report at the annual meeting of the Dark-Fired Tobacco Board and  
3411 furnish all members with a statement of the total receipts and disbursements for the year. He shall file a  
3412 copy of the report and the audit required by § 3.2-2506 with the Commissioner.

3413 § 3.2-2505. Levy of excise tax.

3414 An excise tax of 20 cents (\$0.20) per 100 pounds is levied on all type 21 dark-fired tobacco that is  
3415 harvested in the Commonwealth and sold by the grower, and shall be payable by the grower.

3416 § 3.2-2506. Virginia Dark-Fired Tobacco Promotion Fund established.

3417 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
3418 Dark-Fired Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be  
3419 established on the books of the Comptroller. All moneys levied and collected under this chapter shall be  
3420 paid into the state treasury and credited to the Fund.

3421 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
3422 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
3423 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
3424 carrying out the administration and enforcement of this chapter, including the collection of taxes, the  
3425 payment of personal services and expenses of employees and agents of the Dark-Fired Tobacco Board,  
3426 and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of this  
3427 chapter. Expenditures and disbursements from the Fund shall be made by the Dark-Fired Tobacco  
3428 Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer  
3429 of the Dark-Fired Tobacco Board.

3430 The Auditor of Public Accounts shall audit all the accounts of the Dark-Fired Tobacco Board as is  
3431 provided for in § 30-133.

3432 § 3.2-2507. Collection and disposition of tax; reports.

3433 Every grower shall pay the excise tax on type 21 dark-fired tobacco to the warehouse or handler  
3434 where and when the tobacco is first sold. Each warehouse or handler is designated an agent of the  
3435 Department for the purpose of collecting such excise tax. The tax shall be paid to the Department, to  
3436 the credit of the Dark-Fired Tobacco Board, on or before the tenth day of the month following its  
3437 collection, and paid into the state treasury to the credit of the Virginia Dark-Fired Tobacco Promotion  
3438 Fund.

3439 § 3.2-2508. Records to be kept by warehouse and handler.

3440 Each warehouse or handler shall keep a complete record of the excise tax collected by him and shall  
3441 preserve such record for a period of not less than three years from the time of collection. Such record



3442 shall be open to the inspection of the Dark-Fired Tobacco Board and its duly authorized agents.

3443 § 3.2-2509. Collection of unpaid excise tax and interest thereon.

3444 If the tax imposed by this chapter is not paid when due or any funds collected by a warehouse are  
 3445 not remitted to the Dark-Fired Tobacco Board as required by this chapter, the amount due shall bear  
 3446 interest at the rate of one percent per month from the due date until payment. If any person defaults in  
 3447 any payment of the tax or interest thereon, or fails to remit any funds collected to the Dark-Fired  
 3448 Tobacco Board, the amount shall be collected by civil action in the name of the Commonwealth at the  
 3449 relation of the Dark-Fired Tobacco Board, and the person adjudged in default shall pay the cost of such  
 3450 action. The Attorney General, at the request of the Dark-Fired Tobacco Board, shall institute action for  
 3451 the collection of the amount of any tax past due under this chapter including interest thereon.

3452 § 3.2-2510. Violation a misdemeanor.

3453 It is a Class 1 misdemeanor for any person knowingly to violate any provision of this chapter.

3454

3455 Part C. Other Commodity-Related Boards, Councils, and Foundations.

3456

3456 CHAPTER 26.

3457

3457 AQUACULTURE ADVISORY BOARD.

3458

3458 § 3.2-2600. Definitions.

3459 As used in this chapter, unless the context requires a different meaning:

3460 "Aquaculture" means the propagation, rearing, enhancement, and harvest of aquatic organisms in  
 3461 controlled or selected environments, conducted in marine, estuarine, brackish, or fresh water.

3462 "Aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture,  
 3463 including any laboratory, hatchery, pond, raceway, pen, cage, incubator, or other equipment used in  
 3464 aquaculture.

3465 "Aquatic organism" means any species or hybrid of aquatic animal or plant, including fish, shellfish,  
 3466 marine fish, and marine organisms as those terms are defined by § 28.2-100.

3467 § 3.2-2601. Powers and duties of Commissioner.

3468 The Commissioner shall have the following powers and duties:

3469 1. To provide information and assistance in obtaining permits relating to aquacultural activities;

3470 2. To promote aquaculture including encouraging investment in aquaculture facilities to expand  
 3471 production, processing capacity, and marketing;

3472 3. To work with appropriate state and federal agencies to review, develop, and implement policies  
 3473 and procedures to facilitate aquacultural development;

3474 4. To consult with and assist aquaculture industry groups, aquaculture associations, and academic  
 3475 institutions to develop, maintain, and expand the aquaculture industry; and

3476 5. To develop, support, and implement policies beneficial to Virginia aquaculture.

3477 § 3.2-2602. Aquaculture Advisory Board; composition and appointment of members.

3478 A. The Aquaculture Advisory Board is established as an advisory board in the executive branch of  
 3479 state government. The Aquaculture Advisory Board shall advise the Commissioner on policy matters  
 3480 related to aquaculture.

3481 B. The Governor shall appoint the Aquaculture Advisory Board, which shall be composed of seven  
 3482 members who are representative of the interests of the aquaculture industry.

3483 The Board shall meet at the call of the Commissioner.

3484 § 3.2-2603. Aquaculture Advisory Board membership terms; compensation.

3485 A. The terms for appointments to the Aquaculture Advisory Board shall be for three years.  
 3486 Appointments to fill vacancies shall be made to fill unexpired terms.

3487 B. Members of the Aquaculture Advisory Board shall receive no compensation for their services but  
 3488 shall receive reimbursement for actual expenses.

3489

3489 CHAPTER 27.

3490

3490 MARINE PRODUCTS BOARD.

3491 § 3.2-2700. Marine Products Board; composition and appointment of members.

3492 A. The Marine Products Board is established within the Department.

3493 B. The Marine Products Board shall consist of 11 members appointed by the Governor from among  
 3494 those persons who earn their livelihood from the seafood industry. One member of the Marine Products  
 3495 Board shall be involved in the Virginia menhaden fishery.

3496 § 3.2-2701. Marine Products Board membership terms.

3497 The terms for appointments to the Marine Products Board shall be for three years. No member shall  
 3498 be eligible for appointment to more than two consecutive terms. Appointments to fill vacancies, other  
 3499 than by expiration of a term, shall be for the unexpired terms and made in the same manner as the  
 3500 original appointments.

3501 § 3.2-2702. Marine Products Board officers and compensation.

3502 A. The Marine Products Board shall elect one of its members as chairman, whose term shall be

3503 *three years or until his successor is elected, and such other officers as deemed appropriate.*  
 3504 *B. The Marine Products Board may appoint an executive secretary and employees as may be*  
 3505 *necessary at salaries to be fixed by the Marine Products Board, subject to the provisions of Chapter 29*  
 3506 *(§ 2.2-2900 et seq.) of Title 2.2.*  
 3507 *§ 3.2-2703. Compensation; expenses; principal office; place of meetings.*  
 3508 *A. The members of the Marine Products Board shall serve without compensation, but shall be*  
 3509 *eligible for reimbursement for actual expenses incurred in attending meetings of the Marine Products*  
 3510 *Board.*  
 3511 *B. The Marine Products Board's office shall be located in Tidewater Virginia, and meetings shall be*  
 3512 *held in seafood-producing areas of the Commonwealth.*  
 3513 *§ 3.2-2704. Powers and duties of the Marine Products Board.*  
 3514 *A. The Marine Products Board shall: (i) plan and conduct marketing, educational, and promotional*  
 3515 *campaigns and programs for Virginia marine products; (ii) carry on research and testing programs;*  
 3516 *and (iii) conduct activities relating to the catching, processing, conservation, and marketing of Virginia*  
 3517 *marine products.*  
 3518 *B. The Marine Products Board may investigate, study, and formulate recommendations regarding*  
 3519 *regulation, conservation, and management of marine resources of the Commonwealth.*  
 3520 *C. The Marine Products Board may make contracts and expend money from the Virginia Marine*  
 3521 *Products Fund necessary to carry out the purposes of this chapter. The contracts, debts, and liabilities*  
 3522 *of the Marine Products Board shall not be an obligation of the Commonwealth, but shall be met*  
 3523 *utilizing the sums paid into the Virginia Marine Products Fund.*  
 3524 *D. The Marine Products Board may cooperate with other state, regional, and national seafood*  
 3525 *organizations in research, advertising, publicity, education, and other means of promoting the sale and*  
 3526 *use of seafood, and may expend moneys of the Virginia Marine Products Fund for such purposes.*  
 3527 *§ 3.2-2705. Virginia Marine Products Fund established.*  
 3528 *A. There is hereby created in the state treasury a special nonreverting fund to be known as the*  
 3529 *Virginia Marine Products Fund, hereinafter referred to as "the Fund." The Fund shall be established on*  
 3530 *the books of the Comptroller. All moneys collected and allocated from marine fisheries license fees*  
 3531 *required under Subtitle II (§ 28.2-200 et seq.) of Title 28.2 shall be paid into the state treasury and*  
 3532 *credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited*  
 3533 *to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall*  
 3534 *not revert to the general fund but shall remain in the Fund.*  
 3535 *Moneys in the Fund shall be administered by the Marine Products Board and used exclusively for*  
 3536 *the administration of this chapter, including payment for personal services and expenses of employees*  
 3537 *and agents of the Marine Products Board, rent, services, materials and supplies.*  
 3538 *Expenditures and disbursements from the Fund shall be made by the Marine Products Board on*  
 3539 *warrants issued by the Comptroller upon written request signed by the duly authorized officer of the*  
 3540 *Marine Products Board.*  
 3541 *The Auditor of Public Accounts shall audit all the accounts of the Marine Products Board as*  
 3542 *provided in § 30-133.*

3543 **CHAPTER 28.**  
 3544 **PLANT POLLINATION ADVISORY BOARD.**

3545 *§ 3.2-2800. Definitions.*  
 3546 *As used in this chapter, unless the context requires a different meaning:*  
 3547 *"Beekeeper" means any person who keeps and manages bees for profit, and shall include those*  
 3548 *growers who keep bees for pollinating crops.*  
 3549 *"Cross pollination" means the transfer of pollen from the anthers of blossoms to the stigmas of other*  
 3550 *blossoms of the same crops or a variety of the same crop.*  
 3551 *"Pollination contractor" means any person who contracts to supply a means of cross pollinating the*  
 3552 *blossoms of any specified plant.*  
 3553 *"Producer" means any person engaged in the business of raising crops that benefit from cross*  
 3554 *pollination by honeybees or other pollinating insects.*  
 3555 *"Regular meeting" means a meeting of not less than six members of the Plant Pollination Advisory*  
 3556 *Board held annually.*  
 3557 *"Special meeting" means a meeting of at least six members of the Plant Pollination Advisory Board*  
 3558 *called by the chairman between regular meetings.*  
 3559 *§ 3.2-2801. Plant Pollination Advisory Board; purpose.*  
 3560 *The Plant Pollination Advisory Board is established as an advisory board within the Department.*  
 3561 *The purposes of the Plant Pollination Advisory Board are to:*  
 3562 *1. Sponsor or encourage research, education, and promotion of beekeeping and pollination;*  
 3563 *2. Identify and implement methods for improving Virginia's rank as a honey-producing*  
 3564 *Commonwealth;*

- 3565 3. Assure Virginia agriculture of a reliable supply of pollinators;  
 3566 4. Achieve public acknowledgment of apiculture's contribution to the public welfare;  
 3567 5. Establish a reservoir of expertise among young people through encouragement of educational and  
 3568 promotional activities; and  
 3569 6. Conduct methods improvement projects to improve management, production, and pest control in  
 3570 apiculture.
- 3571 § 3.2-2802. Plant Pollination Advisory Board membership; terms; vacancies; chairman and  
 3572 vice-chairman; meetings.
- 3573 The Plant Pollination Advisory Board shall consist of 11 members appointed by the Governor.  
 3574 Members shall be appointed as follows: three members shall be beekeepers; one member shall be a  
 3575 producer; one member shall be a vegetable producer; one member shall be a fruit producer; one  
 3576 member shall be from Virginia Polytechnic Institute and State University; one member shall be from  
 3577 Virginia State University; one member shall be from the Department and shall serve as  
 3578 secretary-treasurer; one member shall be from the Virginia Department of Education; and one member  
 3579 shall be from the Virginia Community College System. Members shall be appointed for a term of three  
 3580 years. The Commissioner shall serve as an ex officio member of the Plant Pollination Advisory Board  
 3581 with the power to vote.
- 3582 The Commissioner shall immediately declare the office of any member of the Plant Pollination  
 3583 Advisory Board vacant when he finds that the member is unable to perform the duties of his office or  
 3584 for any reason does not meet the qualifications of this section. The Governor shall appoint a new  
 3585 member to serve for a full or unexpired term whenever the office of a member becomes or is declared  
 3586 vacant. In any case where a new appointment is made, the person receiving the appointment shall be a  
 3587 representative of the same segment of agriculture or government as his predecessor. No Plant  
 3588 Pollination Advisory Board member except the secretary-treasurer may serve for more than two  
 3589 consecutive terms. Appointments to fill unexpired terms shall be regarded as full terms.
- 3590 The Plant Pollination Advisory Board shall elect a chairman and vice-chairman from among its  
 3591 membership. The Plant Pollination Advisory Board shall adopt a general statement of policy and  
 3592 procedures subject to approval by the Board. The Plant Pollination Advisory Board shall meet at least  
 3593 once a year and at such special meetings as the chairman may call. The chairman may call a special  
 3594 meeting at any time and shall call a special meeting when requested by six or more members of the  
 3595 Plant Pollination Advisory Board. No meeting shall be deemed a regular or special meeting unless a  
 3596 quorum is present.
- 3597 § 3.2-2803. Plant Pollination Advisory Board compensation.
- 3598 Members of the Plant Pollination Advisory Board shall serve without compensation for the  
 3599 performance of their duties, but nongovernmental members may be reimbursed for reasonable expenses  
 3600 incurred in attending meetings of the Plant Pollination Advisory Board.
- 3601 § 3.2-2804. Duties of the Plant Pollination Advisory Board.
- 3602 The Plant Pollination Advisory Board shall encourage and advise the Commissioner on research,  
 3603 education, methods of improvement in apicultural practices, and promotion projects and shall advise  
 3604 him on any award of funds for such projects deemed necessary or advisable to accomplish the  
 3605 objectives set forth in this chapter.
- 3606 § 3.2-2805. Powers and duties of Commissioner.
- 3607 The Commissioner shall have the following powers and duties:
- 3608 1. To receive and dispense funds;
- 3609 2. To develop and administer, in consultation with the Plant Pollination Advisory Board, a beekeeper  
 3610 assistance program that is designed to assist Virginia beekeepers in maintaining healthy, productive  
 3611 colonies;
- 3612 3. To enter into contracts for the purpose of developing new or improved markets or marketing  
 3613 methods for bees and bee products and pollination services;
- 3614 4. To contract for scientific research services and to contract to develop improved pollinating  
 3615 behavior in honeybees and other pollinating insects;
- 3616 5. To contract for rearing numbers of improved queen bees sufficient for distribution or sale to  
 3617 beekeepers;
- 3618 6. To enter into agreements with any local, state or national organization or agency engaged in  
 3619 education for the purpose of disseminating information on pollinators and pollination of crops;
- 3620 7. To rent or purchase office and laboratory space and land as necessary to carry out its duties;
- 3621 8. To appoint employees, full- or part-time, and to fix their compensation, if any, in accord with the  
 3622 provisions of the Virginia Personnel Act, (§ 2.2-2900 et seq.); and
- 3623 9. To report to the Board in the manner and at such times as the Board may prescribe, regarding  
 3624 the receipt and expenditure of funds and the Plant Pollination Advisory Board's policies, programs, and  
 3625 activities. The Plant Pollination Advisory Board shall ensure that funds made available to the Plant

3626 *Pollination Fund are expended only for the purposes authorized by this chapter.*

3627 *§ 3.2-2806. Plant Pollination Fund established.*

3628 *There is hereby created in the state treasury a special nonreverting fund to be known as the Plant*  
 3629 *Pollination Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the*  
 3630 *Comptroller. All moneys derived from appropriations from the general fund of the state treasury, grants*  
 3631 *of private or government money designated for specified activities authorized pursuant to this chapter;*  
 3632 *fees for services rendered pursuant to this chapter; payment for products, equipment, or material or any*  
 3633 *other thing supplied by the Commissioner; payment for educational publications, materials or supplies*  
 3634 *provided by the Commissioner; and grants, bequests and donations shall be paid into the state treasury*  
 3635 *and credited to the Fund. All funds collected for or received by the Commissioner shall be paid into the*  
 3636 *state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the*  
 3637 *Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of*  
 3638 *each fiscal year shall not revert to the general fund but shall remain in the Fund. The Commissioner is*  
 3639 *further authorized to accept materials, supplies, property, land and personal services contributed from*  
 3640 *any source. Moneys in the Fund shall be used solely for the administration of this chapter. Expenditures*  
 3641 *and disbursements from the Fund shall be made by the Commissioner on warrants issued by the*  
 3642 *Comptroller upon written request signed by a duly authorized officer of the Plant Pollination Advisory*  
 3643 *Board.*

3644 *§ 3.2-2807. Administration of fund.*

3645 *The Plant Pollination Advisory Board shall meet at least once each calendar year to:*

3646 *1. Consider proposals from applicants for funds, and advise the Commissioner on disbursements,*  
 3647 *unless the chairman determines from a quorum that there is insufficient justification for such meeting.*  
 3648 *Recommendations of the Plant Pollination Advisory Board on applications for funds shall be by*  
 3649 *recorded vote.*

3650 *2. Receive reports required by the Plant Pollination Advisory Board on activities funded by the*  
 3651 *Commissioner. The secretary-treasurer of the Plant Pollination Advisory Board shall present an annual*  
 3652 *report to the members and to the Board, including an accurate account of all receipts and*  
 3653 *disbursements from the fund.*

#### CHAPTER 29. AGRICULTURAL COUNCIL.

3654 *§ 3.2-2900. Definitions.*

3655 *As used in this chapter, unless the context requires a different meaning:*

3656 *"Farmers" shall include all producers of agricultural products such as cotton, tobacco, peanuts,*  
 3657 *soybeans, potatoes, vegetables, fruits, livestock, livestock products, poultry and turkeys, any other*  
 3658 *agricultural products having domestic and foreign markets, and all nursery, horticultural, or*  
 3659 *floricultural products.*

3660 *§ 3.2-2901. Agricultural Council; composition and appointment of members.*

3661 *The Agricultural Council is continued within the executive branch of state government. The*  
 3662 *Agricultural Council shall consist of 18 members to be appointed by the Governor. Insofar as practical,*  
 3663 *15 members shall be actively engaged in farming and shall be primarily engaged in the production of a*  
 3664 *different agricultural commodity. The Commissioner, the dean of the College of Agriculture and Life*  
 3665 *Sciences of Virginia Polytechnic Institute and State University, and the Associate Vice President for*  
 3666 *Agriculture and Extension of Virginia State University shall serve as members ex officio.*

3667 *§ 3.2-2902. Agricultural Council membership terms.*

3668 *The terms for appointments to the Agricultural Council shall run concurrently with the term of the*  
 3669 *Governor making the appointment, but vacancies occurring before the expiration of term shall be filled*  
 3670 *for the unexpired term.*

3671 *§ 3.2-2903. Agricultural Council officers and compensation.*

3672 *A. The Agricultural Council shall elect from its membership a chairman, vice-chairman, and such*  
 3673 *other officers as it deems appropriate.*

3674 *B. Members of the Agricultural Council shall be paid their necessary traveling expenses incurred in*  
 3675 *connection with the performance of their duties. Such compensation and expenses shall be paid from the*  
 3676 *Virginia Agricultural Foundation Fund.*

3677 *§ 3.2-2904. Powers and duties of the Agricultural Council.*

3678 *A. The Agricultural Council shall have charge of the management and expenditure of the Virginia*  
 3679 *Agricultural Foundation Fund. The Agricultural Council may expend funds to provide for programs of*  
 3680 *agricultural research and education and agricultural services; manage the fund so as to accumulate a*  
 3681 *reserve for contingencies; establish an office and employ such technical, professional, and other*  
 3682 *assistants as may be required, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et*  
 3683 *seq.); contract for research and other services; and take all such measures as will assist in*  
 3684 *strengthening and promoting the best interests of agriculture in the Commonwealth.*

3685 *B. The chairman shall submit an annual report to the members, the Governor, and the General*  
 3686 *Assembly.*

3688 Assembly on or before November 1 of each year. The report shall contain the annual financial  
 3689 statements of the Agricultural Council for the year ending the preceding June 30.

3690 § 3.2-2905. Virginia Agricultural Foundation Fund established.

3691 There is hereby established in the state treasury a special nonreverting fund to be designated as the  
 3692 Virginia Agricultural Foundation Fund, hereafter referred to as "the Fund." The Fund shall be  
 3693 established on the books of the Comptroller. All transfers made to the Fund under §§ 3.2-3617,  
 3694 3.2-3710, 3.2-4004, 3.2-4814, 58.1-2111, and 58.1-2146, other moneys appropriated thereto, gifts and  
 3695 grants, and interest accruing thereon shall be paid into the state treasury and credited to the Fund.  
 3696 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
 3697 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
 3698 general fund but shall remain in the Fund. The Fund shall be expended in accordance with the  
 3699 directions of the Agricultural Council and drawn from the state treasury in the manner provided by law.

3700 CHAPTER 30.  
 3701 WINE BOARD.

3702 § 3.2-3000. Definitions.

3703 As used in this chapter, unless the context requires a different meaning:

3704 "Enology" means those practices and that body of knowledge involved in the production, aging,  
 3705 storing, and packaging of wine.

3706 "Farm winery" or "winery" means an "establishment" as defined in § 4.1-100.

3707 "Grape grower" means a commercial grower who: (i) sells at least \$10,000 worth of grapes  
 3708 annually; or (ii) has planted and maintains at least three acres of vines of a type used for the  
 3709 production of wine.

3710 "Viticulture" means the cultivation and study of grapes and grapevines.

3711 "Wine" means an alcoholic beverage as defined in § 4.1-100.

3712 "Winegrower" means any person or entity producing wine from approved products grown by that  
 3713 individual.

3714 § 3.2-3001. Wine Board; purpose; composition and appointment of members; quorum; meetings.

3715 A. The Wine Board is established within the Department. The purpose of the Wine Board is to foster  
 3716 the development of the Virginia wine industry by expanding viticulture and enological research,  
 3717 increasing education, and promoting the production of grapes and wine in the Commonwealth.

3718 B. The Wine Board shall consist of 10 members, nine of whom shall be voting nonlegislative citizen  
 3719 members, to be appointed by the Governor, and the 10th shall be the Commissioner, who shall serve as  
 3720 a nonvoting *ex officio* member. Nonlegislative citizen members shall be citizens of the Commonwealth  
 3721 and shall be either grape growers or owners or operators of a winery or farm winery in the  
 3722 Commonwealth. The Governor shall make his appointments upon consideration of the recommendations  
 3723 made by any grape grower, an owner or operator of a winery or farm winery, or the following  
 3724 agricultural organizations or their successor organizations: the Virginia Wineries Association, Inc.; the  
 3725 Virginia Vineyards Association, Inc.; the Virginia Farm Bureau; and the Virginia Agribusiness Council.

3726 C. A majority of the members of the Wine Board shall constitute a quorum, but a two-thirds vote of  
 3727 the members present shall be required for passage of items taken up by the Wine Board. The Wine  
 3728 Board shall meet at least four times each year. The meetings of the Wine Board shall be held at the call  
 3729 of the chairman or whenever the majority of the members so request.

3730 § 3.2-3002. Wine Board membership terms; vacancies.

3731 Initial appointments of nonlegislative citizen members to the Wine Board shall be staggered as  
 3732 follows: six nonlegislative citizen members shall be owners or operators of wineries or farm wineries in  
 3733 Virginia, two of whom shall serve for terms of three years, two shall serve for terms of two years, and  
 3734 two shall serve a term of one year; and three nonlegislative citizen members shall be grape growers  
 3735 with no controlling financial interest in a winery or farm winery, one of whom shall serve a term of  
 3736 three years, one shall serve a term of two years, and one shall serve a term of one year. Thereafter,  
 3737 nonlegislative citizen members shall be appointed for a term of four years. The Commissioner shall  
 3738 serve a term coincident with his term of office. Appointments to fill vacancies, other than by expiration  
 3739 of a term, shall be for the unexpired terms. All members may be reappointed. Nonlegislative citizen  
 3740 member shall serve more than two consecutive four-year terms. The remainder of any term to which a  
 3741 member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility  
 3742 for reappointment. Vacancies shall be filled in the same manner as the original appointments.

3743 § 3.2-3003. Wine Board officers and compensation.

3744 A. The Wine Board shall elect a chairman and other officers as deemed necessary from among its  
 3745 membership.

3746 B. Members of the Wine Board shall receive no compensation for the discharge of their duties but  
 3747 the nonlegislative citizen members shall be reimbursed for reasonable and necessary expenses incurred  
 3748 in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for expenses of the

3749 nonlegislative citizen members shall be provided from the Virginia Wine Promotion Fund established  
 3750 under § 3.2-3005.

3751 § 3.2-3004. Powers and duties of the Wine Board.

3752 The Wine Board shall have the following powers and duties:

3753 1. To receive and dispense funds or donations from the Virginia Wine Promotion Fund;

3754 2. To enter into contracts for the purpose of developing new or improved markets or marketing  
 3755 methods for wine and grape products;

3756 3. To contract for research services to improve viticulture and enological practices in Virginia;

3757 4. To enter into agreements with any local, state, or national organization or agency engaged in  
 3758 education for the purpose of disseminating information on wine or other viticulture projects;

3759 5. To enter into contracts with private or public entities for the purpose of developing marketing,  
 3760 advertising and other promotional programs designed to promote the orderly growth of Virginia's wine  
 3761 industry;

3762 6. To rent or purchase office and laboratory space, land, equipment, and supplies as necessary to  
 3763 carry out its duties;

3764 7. To employ such personnel as may be required to carry out those duties conferred by law;

3765 8. To acquire any licenses or permits necessary for the performance of the powers and duties of the  
 3766 Wine Board;

3767 9. To cooperate with other state, regional, national, and international organizations in research,  
 3768 education, and promotion of the growing of grapes and the production of wine in the Commonwealth  
 3769 and to expend moneys from the Fund for such purposes;

3770 10. To adopt a general statement of policy and procedures; and

3771 11. To receive from the Chairman of the Wine Board an annual report, including a statement of total  
 3772 receipts and disbursements for the year, and file a copy of such report with the Commissioner.

3773 § 3.2-3005. Virginia Wine Promotion Fund established.

3774 A. There is hereby created in the state treasury a special nonreverting fund to be known as the  
 3775 Virginia Wine Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on  
 3776 the books of the Comptroller. The Fund shall consist of all moneys appropriated to it by the General  
 3777 Assembly, grants of private or government funds designated for specified activities authorized pursuant  
 3778 to this chapter, fees for services rendered pursuant to this chapter, payments for products, equipment, or  
 3779 material or other goods supplied. All moneys shall be paid into the state treasury and credited to the  
 3780 Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any  
 3781 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert  
 3782 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the  
 3783 purposes of carrying out the provisions of this chapter. Expenditures and disbursements from the Fund  
 3784 shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed  
 3785 by the duly authorized officer of the Wine Board.

3786 B. The Wine Board shall meet and evaluate proposals from applicants for funding from the Fund.  
 3787 The Wine Board's final recommendations shall be made by recorded vote. Not less than one-third of the  
 3788 funding allocated by the Wine Board annually, excluding revenue-producing activities engaged in  
 3789 pursuant to § 3.2-3006, shall be expended for projects that advance viticulture and enological research  
 3790 concerning the growing of grapes and the production of wine in Virginia.

3791 C. The Auditor of Public Accounts shall audit all accounts as provided in § 30-133.

3792 § 3.2-3006. Revenue-producing activities of the Wine Board.

3793 To help defray the costs of its program, the Wine Board may: (i) publish materials with printed  
 3794 advertisements; (ii) sell printed materials; (iii) rent exhibit space at meetings or other events; (iv)  
 3795 charge entrance or participation fees; and (v) engage in other revenue-producing activities related to  
 3796 research, education, and promotion of the growing of grapes and the production of wine in Virginia.  
 3797 The Wine Board shall promptly deposit the proceeds of any revenue-producing activities into the Fund.  
 3798 The provisions of Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2 and of Articles 1 (§ 2.2-4300  
 3799 et seq.), 2 (§ 2.2-4303 et seq.), 3 (§ 2.2-4343 et seq.), and 5 (§ 2.2-4357 et seq.) of Chapter 43 of Title  
 3800 2.2 shall not apply to contracts for advertising, marketing, or publishing entered into by the Wine  
 3801 Board. The provisions of Articles 4 (§ 2.2-4347 et seq.) and 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title  
 3802 2.2 shall apply to such contracts.

3803 Part D. Tobacco Indemnification and Community Revitalization Commission.

3804 CHAPTER 31.

3805 TOBACCO INDEMNIFICATION AND COMMUNITY REVITALIZATION COMMISSION.

3806 § 3.2-3100. Definitions.

3807 As used in this chapter, unless the context requires a different meaning:

3808 "Active tobacco producer" means a person: (i) actively engaged in planting, growing, harvesting,  
 3809 and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the  
 3810 crop, and is therefore entitled to share in the revenue derived from marketing the crop; and (ii) who

3811 produces such crop on a farm where tobacco was produced for the 1998 crop year, or any subsequent  
 3812 crop year upon which the Commission may determine to base indemnification payments, pursuant to a  
 3813 tobacco farm marketing quota or farm acreage allotment as established under the Agriculture  
 3814 Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

3815 "Agreement" means the agreement or agreements between the Commonwealth, as seller of the  
 3816 Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the  
 3817 Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a  
 3818 borrowing.

3819 "Commission" means the Tobacco Indemnification and Community Revitalization Commission created  
 3820 pursuant to § 3.2-3101.

3821 "Commission Allocation" means 50 percent of the annual amount received under the Master  
 3822 Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such  
 3823 allocation pursuant to an agreement, between the commencing and ending dates specified in the  
 3824 agreement.

3825 "Corporation" means the Tobacco Settlement Financing Corporation as created under state law.

3826 "Endowment" means the Tobacco Indemnification and Community Revitalization Endowment  
 3827 established pursuant to § 3.2-3104.

3828 "Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant  
 3829 to § 3.2-3106.

3830 "Master Settlement Agreement" means the settlement agreement and related documents between the  
 3831 Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and  
 3832 including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond  
 3833 on February 23, 1999, Chancery Number HJ-2241-4.

3834 "Period of sale" means the time during which a purchaser under an agreement is entitled to receive  
 3835 the Commission Allocation.

3836 "Quota holder" means an owner of a farm on July 1, 1998, or July 1 of any subsequent crop year  
 3837 upon which the Commission may determine to base indemnification payments, for which a tobacco farm  
 3838 marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of  
 3839 1938 (7 U.S.C. § 1281 et seq.).

3840 "Tobacco Assets" means all right, title, and interest in and to the portion of the Commission  
 3841 Allocation that may be sold to the Corporation.

3842 "Tobacco farmer" means any person who is an active tobacco producer, a quota holder, or both.

3843 § 3.2-3101. Tobacco Indemnification and Community Revitalization Commission created; purposes.

3844 A. The Tobacco Indemnification and Community Revitalization Commission is created as a body  
 3845 corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with,  
 3846 all of the politic and corporate powers as are set forth in this chapter. The Commission is established  
 3847 for the purposes of determining the appropriate recipients of moneys in the Tobacco Indemnification and  
 3848 Community Revitalization Fund and causing distribution of such moneys for the purposes provided in  
 3849 this chapter, including using moneys in the Fund to: (i) provide payments to tobacco farmers as  
 3850 compensation for the adverse economic effects resulting from loss of investment in specialized tobacco  
 3851 equipment and barns and lost tobacco production opportunities associated with a decline in quota; and  
 3852 (ii) revitalize tobacco dependent communities. The Commission shall have only those powers enumerated  
 3853 in § 3.2-3103.

3854 § 3.2-3102. Membership; terms; vacancies; compensation and expenses; chairman; chairman's  
 3855 executive summary.

3856 A. The Commission shall be composed of 31 members as follows:

3857 1. Six members of the House of Delegates appointed by the Speaker of the House of Delegates in  
 3858 accordance with the principles of proportional representation contained in the Rules of the House of  
 3859 Delegates;

3860 2. Four members of the Senate appointed by the Senate Committee on Privileges and Elections;

3861 3. The Secretary of Commerce and Trade or his designee;

3862 4. The Secretary of Finance or his designee;

3863 5. The Commissioner;

3864 6. Three nonlegislative citizen members who shall be active flue-cured tobacco producers appointed  
 3865 by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor  
 3866 from a list of six persons provided by the members of the General Assembly appointed to the  
 3867 Commission;

3868 7. Three nonlegislative citizen members who shall be active burley tobacco producers appointed by  
 3869 the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor  
 3870 from a list of three persons provided by the members of the General Assembly appointed to the  
 3871 Commission;

3872 8. One nonlegislative citizen member who shall be a representative of the Virginia Farm Bureau  
 3873 Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm  
 3874 Bureau Federation; and

3875 9. Eleven members shall be nonlegislative citizens appointed by the Governor. Of the 11  
 3876 nonlegislative citizen members, three shall be appointed by the Governor from a list of nine provided by  
 3877 the members of the General Assembly appointed to the Commission.

3878 With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of  
 3879 Finance or his designee and the Commissioner, all members of the Commission shall reside in the  
 3880 Southside and Southwest regions of the Commonwealth and shall be subject to confirmation by the  
 3881 General Assembly. To the extent feasible, appointments representing the Southside and Southwest  
 3882 regions shall be proportional to the tobacco quota production of each region.

3883 Except as otherwise provided herein, all appointments shall be for terms of four years each.  
 3884 Legislative members, the Secretary of Commerce and Trade, the Secretary of Finance, and the  
 3885 Commissioner shall serve terms coincident with their terms of office. Nonlegislative citizen member shall  
 3886 be eligible to serve more than two successive four-year terms. After expiration of a term of three years  
 3887 or less, two additional four-year terms may be served by such member if appointed thereto.  
 3888 Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired  
 3889 terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment.  
 3890 The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term  
 3891 in determining the member's eligibility for reappointment.

3892 The initial appointments of the active flue-cured tobacco producers, the active burley tobacco  
 3893 producers, and other nonlegislative citizen members shall be as follows: one active flue-cured tobacco  
 3894 producer, one active burley tobacco producer and four nonlegislative citizen members shall be  
 3895 appointed for terms of two years; one active flue-cured tobacco producer, one active burley tobacco  
 3896 producer and four nonlegislative citizen members shall be appointed for terms of three years; and one  
 3897 active flue-cured tobacco producer, one active burley tobacco producer and three nonlegislative citizen  
 3898 members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of  
 3899 four years.

3900 B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of  
 3901 whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his  
 3902 absence, the vice-chairman, shall preside at all meetings of the Commission. The meetings of the  
 3903 Commission shall be held on the call of the chairman or whenever the majority of the members so  
 3904 request. A majority of members of the Commission serving at any one time shall constitute a quorum for  
 3905 the transaction of business.

3906 C. Legislative members of the Commission shall receive such compensation as is set forth in  
 3907 § 30-19.12, and nonlegislative members shall receive such compensation for the performance of their  
 3908 duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary  
 3909 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such  
 3910 compensation and expenses shall be paid from the Fund.

3911 D. Members and employees of the Commission shall be subject to the standards of conduct set forth  
 3912 in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed  
 3913 from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set  
 3914 forth therein.

3915 E. Except as otherwise provided in this chapter, members and employees of the Commission shall be  
 3916 subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

3917 F. The chairman of the Commission shall submit to the Governor and the General Assembly an  
 3918 annual executive summary of the interim activity and work of the Commission no later than the first day  
 3919 of each regular session of the General Assembly. The executive summary shall be submitted as provided  
 3920 in the procedures of the Division of Legislative Automated Systems for the processing of legislative  
 3921 documents and reports and shall be posted on the General Assembly's website.

3922 § 3.2-3103. Powers and duties of the Tobacco Indemnification and Community Revitalization  
 3923 Commission.

3924 A. The Commission shall have the power and duty to:

3925 1. Adopt, use, and alter at will an official seal;

3926 2. Make bylaws for the management and regulation of its affairs;

3927 3. Maintain an office at such place or places within the Commonwealth as it may designate;

3928 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or  
 3929 bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is  
 3930 created;

3931 5. Determine how moneys in the Fund are to be distributed and to authorize grants, loans, or other  
 3932 distributions of moneys in the Fund for the purposes set forth in this chapter;

3933 6. Make and execute contracts and all other instruments and agreements necessary or convenient for



3934 *the exercise of its powers and functions;*

3935 7. *Invest its funds as provided in this chapter or permitted by applicable law; and*

3936 8. *Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably*  
 3937 *implied, including use of whatever lawful means may be necessary and appropriate to recover any*  
 3938 *payments wrongfully made from the Fund.*

3939 B. *The Commission shall undertake studies and gather information and data in order to determine:*  
 3940 *(i) the economic consequences of the reduction in or elimination of quota for tobacco growers; (ii) the*  
 3941 *potential for alternative cash crops; and (iii) any other matters the Commission believes will affect*  
 3942 *tobacco growers in the Commonwealth.*

3943 C. *The Commission shall submit a report annually to the Governor and the General Assembly.*

3944 § 3.2-3104. *Tobacco Indemnification and Community Revitalization Endowment.*

3945 A. *There is hereby established in the state treasury a special fund to be designated the "Tobacco*  
 3946 *Indemnification and Community Revitalization Endowment." The Endowment shall receive any proceeds*  
 3947 *from any sale of all or any portion of the Commission Allocation, and any gifts, grants, and*  
 3948 *contributions that are specifically designated for inclusion in such Endowment. No part of the*  
 3949 *Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state*  
 3950 *treasury. The Endowment shall be under the management and control of the Treasury Board, and the*  
 3951 *Treasury Board shall have such powers and authority as may be necessary to exercise such management*  
 3952 *and control consistent with the provisions of this section. The income of the Endowment shall be paid*  
 3953 *out, not less than annually, to the Fund. In addition, up to 10 percent of the corpus of the Endowment*  
 3954 *shall be paid to the Fund annually upon request of the Commission to the Treasury Board. Upon*  
 3955 *two-thirds vote of the Commission, up to 15 percent of the corpus of the Endowment shall be so paid.*  
 3956 *No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be deemed*  
 3957 *taxable. For purposes of this section, "income" of the Endowment means at the time of determination*  
 3958 *the lesser of the available cash in, or the realized investment income for the applicable period of, the*  
 3959 *Endowment, and "corpus" of the Endowment means at the time of determination the sum of the proceeds*  
 3960 *from the sale of all or any portion of the Commission Allocation, any gifts, grants, and contributions*  
 3961 *that have been credited to such Endowment, and any income not appropriated and withdrawn from the*  
 3962 *Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the*  
 3963 *Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or*  
 3964 *the amount of the corpus shall be conclusive.*

3965 B. *The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the*  
 3966 *Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in*  
 3967 *subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The*  
 3968 *Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in*  
 3969 *accordance with the provisions of the Uniform Management of Institutional Funds Act (§ 55-268.1 et*  
 3970 *seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such*  
 3971 *amounts as may be necessary whenever in its judgment it would be more advantageous to borrow*  
 3972 *money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly*  
 3973 *authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the*  
 3974 *biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of*  
 3975 *investment, the corpus of the Endowment provided that it shall appropriately account for the investments*  
 3976 *credited to the Endowment. The Treasury Board may hire independent investment advisors and*  
 3977 *managers as it deems appropriate to assist with investing the Endowment. The expenses of making and*  
 3978 *disposing of investments, such as brokerage commissions, legal expenses related to a particular*  
 3979 *transaction, investment advisory and management fees and expenses, transfer taxes, and other customary*  
 3980 *transactional expenses shall be payable out of the income of the Endowment.*

3981 *Not less than annually and more frequently if so desired by the Commission or requested by the*  
 3982 *Treasury Board, the Commission shall provide to the Treasury Board schedules of anticipated*  
 3983 *disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall,*  
 3984 *to the extent practicable, take into account such schedules and changes thereto in scheduling maturities*  
 3985 *and redemptions of its investments of the Endowment.*

3986 § 3.2-3105. *Appointment of director; Commission employees; counsel to the Commission.*

3987 A. *The Governor shall appoint an executive director subject to confirmation by the General*  
 3988 *Assembly. The compensation shall be determined by the Commission, subject to approval by the*  
 3989 *Governor. The executive director shall serve as the secretary to the Commission and shall administer*  
 3990 *the affairs and business of the Commission in accordance with the provisions of this chapter and subject*  
 3991 *to the policies, control, and direction of the Commission. The Commission may employ technical experts*  
 3992 *and other officers, agents, and employees, permanent and temporary, as it requires, and shall determine*  
 3993 *their qualifications, duties, and compensation. The Commission may delegate to one or more of its*  
 3994 *agents or employees the administrative duties it deems proper. The actual expenses incurred in the*

3995 performance of such duties shall be paid from the Fund.

3996 B. Employees of the Commission shall be treated as state employees for purposes of participation in  
3997 the Virginia Retirement System, health insurance, and all other employee benefits offered by the  
3998 Commonwealth to its classified employees. Employees of the Commission shall not be subject to the  
3999 provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

4000 C. The Office of the Attorney General shall provide counsel to the Commission.

4001 § 3.2-3106. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology  
4002 industries in tobacco-dependent localities.

4003 A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be  
4004 deposited into the state treasury subject to the special nonreverting funds established by subsection B  
4005 and by §§ 3.2-3104 and 32.1-360.

4006 B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco  
4007 Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the  
4008 Comptroller. Subject to the sale of all or any portion of the Commission Allocation, 50 percent of the  
4009 annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into  
4010 the state treasury and credited to the Fund. In the event of such sale: (i) the Commission Allocation  
4011 shall be paid in accordance with the agreement for the period of sale; and (ii) the Fund shall receive  
4012 the amounts withdrawn from the Endowment in accordance with § 3.2-3104. Interest earned on moneys  
4013 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,  
4014 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall  
4015 remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter.  
4016 Starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may  
4017 deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund,  
4018 established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and  
4019 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund  
4020 shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization  
4021 signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys  
4022 received by the Commission, from any source, for the purpose of implementing the provisions of this  
4023 chapter.

4024 C. The obligations of the Commission shall not be a debt or grant or loan of credit of the  
4025 Commonwealth, and the Commonwealth shall not be liable thereon, nor shall such obligations be  
4026 payable out of any funds other than those credited to the Fund.

4027 § 3.2-3107. Payments from the Fund; transfer and recovery of payments; limitation on claims.

4028 A. No payments made, or otherwise payable, to tobacco farmers under this chapter shall be  
4029 transferable or assignable, at law or in equity, except by testate or intestate succession, or by a  
4030 property settlement agreement, separation agreement, or judicial decree in a separation or divorce  
4031 proceeding. Except in actions initiated by or on behalf of the Commission, no payments made, or  
4032 otherwise payable, to tobacco farmers under this chapter shall be subject to execution, levy, attachment,  
4033 garnishment, or other legal process until such money has been paid or distributed. The Commonwealth,  
4034 and any department, agency, or institution thereof, the Commission, and their agents and employees,  
4035 shall not be a party or otherwise subject to such execution, levy, attachment, garnishment, or other legal  
4036 process.

4037 B. Grants, loans, or other distributions paid or payable from the Fund to promote economic growth  
4038 and development shall not be subject to execution, levy, attachment, garnishment, or other legal process,  
4039 except in actions initiated by or on behalf of the Commission. Such grants, loans, or other distributions  
4040 shall only be transferable or assignable in accordance with terms established by the Commission.

4041 C. Any payment from the Fund that is later determined to have been made wrongly or erroneously  
4042 may be recovered by the Commission either by way of a credit or offset against any future payments  
4043 otherwise distributable to the recipient or by judicial action. Prior to making any such determination,  
4044 the Commission shall give the recipient reasonable prior written notice and an opportunity to be heard  
4045 in accordance with rules established by the Commission.

4046 D. In addition to any other penalties provided by law, any person requesting or applying for a  
4047 payment from the Fund who knowingly makes any false, fictitious, or fraudulent statements or  
4048 representations or otherwise knowingly provides any false, fictitious, or fraudulent information to the  
4049 Commission shall forfeit his opportunity or eligibility to receive any payments from the Fund.

4050 E. Any eligible person who fails, for any reason whatsoever, to apply for any indemnification  
4051 payment determined to be distributable by the Commission by the deadline established by the  
4052 Commission or its Executive Director for the receipt of applications or verification forms shall be  
4053 forever barred from receiving such payment unless the person makes appropriate written application to  
4054 the Commission that is received within one year of the established deadline. At the end of such one-year  
4055 period, no action shall lie against the Fund or the Commission for such payments to the person from  
4056 the Fund.

4057 *F. All payments made or eligible to be made under this chapter shall be deemed to be granted and*  
 4058 *to be held subject to the provisions of this chapter and any amending or repealing act that may*  
 4059 *hereafter be passed, and no person shall have any claim for compensation, or otherwise, by reason of*  
 4060 *his payments or payment eligibility being affected in any way by any amending or repealing act.*

4061 *§ 3.2-3108. Distribution of Fund.*

4062 *The Fund shall be distributed by the Commission for the following purposes:*

4063 *1. The compensation of Virginia tobacco farmers for the decline or elimination of the tobacco quota*  
 4064 *based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years*  
 4065 *1995 through 1998.*

4066 *To the extent quota holders in Virginia are not otherwise compensated by a national tobacco*  
 4067 *community trust fund or a federal tobacco loss assistance program that is based on substantially the*  
 4068 *same distribution criteria established by the Commission for indemnification payments and to the extent*  
 4069 *moneys are available in the Fund, the Fund shall be used to compensate quota holders in an amount*  
 4070 *equal to the total lost asset value in quota incurred annually by such quota holders.*

4071 *To the extent active tobacco producers in Virginia are not otherwise compensated by a national*  
 4072 *tobacco community trust fund or a federal tobacco loss assistance program that is based on*  
 4073 *substantially the same distribution criteria established by the Commission for indemnification payments*  
 4074 *and to the extent moneys are available in the Fund, the Fund shall be used to compensate active*  
 4075 *tobacco producers for the economic loss resulting from any annual quota reduction.*

4076 *For the purposes of this section, the total asset loss value in quota and economic losses for tobacco*  
 4077 *farmers in Virginia shall be estimated to be \$1.2 billion.*

4078 *The Commission may establish criteria for determining economic loss resulting from any annual*  
 4079 *quota reduction, including any similar criteria established pursuant to the creation of a national tobacco*  
 4080 *community trust fund; and*

4081 *2. The stimulation of economic growth and development in tobacco-dependent communities in an*  
 4082 *equitable manner throughout the southside and southwest regions of the Commonwealth, to assist such*  
 4083 *communities in reducing their dependency on, or finding alternative uses for, tobacco and*  
 4084 *tobacco-related business.*

4085 *§ 3.2-3109. Form of accounts; annual audit.*

4086 *A. The accounts and records of the Commission showing the receipt and disbursement of funds from*  
 4087 *whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.*

4088 *B. The accounts of the Commission shall be audited annually by the Auditor of Public Accounts, or*  
 4089 *his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor*  
 4090 *and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.*

4091 *§ 3.2-3110. Declaration of public purpose; exemption from taxation.*

4092 *A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the*  
 4093 *citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.*

4094 *B. The Commission shall be performing an essential governmental function in the exercise of the*  
 4095 *powers conferred upon it by this chapter, and the property of the Commission and its income and*  
 4096 *operations shall be exempt from taxation or assessments upon any property acquired or used by the*  
 4097 *Commission under the provisions of this chapter.*

4098 *§ 3.2-3111. Confidentiality of information.*

4099 *A. The Commission shall hold in confidence the personal and financial information supplied to it, or*  
 4100 *maintained by it, concerning tobacco farmers, including names, addresses, and payment information.*  
 4101 *The Commission may require any tobacco farmer or other applicant for payments from the Fund to*  
 4102 *provide his social security or taxpayer identification number.*

4103 *B. Notwithstanding the foregoing, personal and financial information supplied to or maintained by*  
 4104 *the Commission relating to tobacco farmers may be used, exchanged, and disclosed at the Commission's*  
 4105 *discretion as may be necessary or appropriate to make payments under, administer, or enforce this*  
 4106 *chapter and related state and federal laws, any other state or federal tobacco indemnification or loss*  
 4107 *assistance program, or a national tobacco community trust fund.*

4108 *C. Nothing in this section shall prohibit the Commission, in its discretion, from releasing any*  
 4109 *information that has been transformed into a statistical or aggregate form that does not allow the*  
 4110 *identification of the person who supplied particular information or the sum of money received by a*  
 4111 *particular recipient.*

4112 *D. Personal and financial information supplied by or maintained on persons or entities applying for*  
 4113 *or receiving distributions from the Fund for economic growth and development, as well as specific*  
 4114 *information relating to the amount and identity of recipients of such distributions, shall be subject to*  
 4115 *disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The*  
 4116 *provisions of that Act applicable to records or meetings of the Virginia Economic Development*  
 4117 *Partnership or other state or local economic development entities shall apply mutatis mutandis to the*

4118 *Commission.*

4119 *E. The provisions of this section shall also apply to any department, agency, institution, political*  
 4120 *subdivision, or employee of the Commonwealth or a political subdivision that receives personal or*  
 4121 *financial information from the Commission in order to process checks for payments from the Fund or to*  
 4122 *assist the Commission with the administration and enforcement of this chapter.*

4123 *SUBTITLE III.*

4124 *PRODUCTION AND SALE OF AGRICULTURAL PRODUCTS.*

4125 *CHAPTER 32.*

4126 *MILK COMMISSION.*

4127 *§ 3.2-3200. Definitions.*

4128 *As used in this chapter, unless the context requires a different meaning:*

4129 *"Affiliate" means any person or subsidiary thereof, who has, either directly or indirectly, actual or*  
 4130 *legal control over a distributor, whether by stock ownership or in any other manner.*

4131 *"Books and records" mean books, records, accounts, contracts, memoranda, documents, papers,*  
 4132 *correspondence, or other data, pertaining to the business of the person in question.*

4133 *"Commission" means the Milk Commission.*

4134 *"Consumer" means any person, other than a milk distributor, who purchases milk for human*  
 4135 *consumption.*

4136 *"Distributor" means any of the following persons engaged in the business of distributing, marketing,*  
 4137 *or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the*  
 4138 *Commonwealth:*

4139 *1. Persons, regardless of whether any such person is a producer:*

4140 *a. Who pasteurize or bottle milk or process milk into fluid milk;*

4141 *b. Who sell or market fluid milk at wholesale or retail to: (i) hotels, restaurants, stores, or other*  
 4142 *establishments for consumption on the premises; (ii) stores or other establishments for resale; or (iii)*  
 4143 *consumers; or*

4144 *c. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off*  
 4145 *the premises.*

4146 *2. Persons, wherever located or operating, whether within or without the Commonwealth, who*  
 4147 *purchase, market, or handle milk for resale as fluid milk in the Commonwealth.*

4148 *"Health authorities" include the Board of Health, the Office of Dairy and Foods in the Department,*  
 4149 *and the local health authorities.*

4150 *"Licensee" means a licensed milk distributor.*

4151 *"Market" means any locality, or two or more localities, and surrounding territory designated by the*  
 4152 *Commission as a marketing area.*

4153 *"Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy*  
 4154 *cows properly fed, housed, and kept; including milk that is cooled, pasteurized, standardized, or*  
 4155 *otherwise processed with a view to selling.*

4156 *"Producer" means any person, regardless of whether they are also a distributor, who produces milk*  
 4157 *for sale as fluid milk in the Commonwealth.*

4158 *"Producer-distributor" means a distributor who handles only milk produced by himself.*

4159 *"Sanitary regulations" include all laws and ordinances relating to the production, handling,*  
 4160 *transportation, distribution, and sale of milk and, so far as applicable, regulations adopted by the Board*  
 4161 *or the health authorities.*

4162 *"Subsidiary" means any person that a distributor or an affiliate of a distributor has, or several*  
 4163 *distributors collectively have, either directly or indirectly, actual or legal control, whether by stock*  
 4164 *ownership or in any other manner.*

4165 *§ 3.2-3201. Milk Commission; composition and appointment of members.*

4166 *The Milk Commission is continued within the Department and shall report directly to the*  
 4167 *Commissioner. The Commission shall consist of an Administrator and seven members, all of whom shall*  
 4168 *be residents of the Commonwealth, appointed by the Governor, two of whom shall be producers, and*  
 4169 *five including the Administrator shall be consumers but none of such five latter members shall have any*  
 4170 *connection financially or otherwise with the production or distribution of milk or products derived*  
 4171 *therefrom. The remaining member of the Commission shall be a milk processor-distributor. The*  
 4172 *Administrator shall serve in an ex officio capacity without a vote. Any vacancies occurring shall be*  
 4173 *filled by appointment by the Governor. One member of the Commission shall act as chairman, who shall*  
 4174 *be elected annually by the membership of the Commission. No member shall serve as chairman and as*  
 4175 *Administrator and no chairman shall serve successive terms as chairman.*

4176 *The Administrator shall devote full time to the duties of his office, which shall be located in the*  
 4177 *principal office of the Commission. The technical and other services for such Commission shall be*  
 4178 *performed, so far as practicable, by the Department, the Virginia Cooperative Extension Service, and*  
 4179 *the Virginia Agricultural Research and Experiment Station, without additional compensation. The*

4180 Administrator may appoint a secretary and any such additional technical and other assistants and  
 4181 employees as may be necessary to carry out the provisions of this chapter, and prescribe their powers  
 4182 and duties. The Administrator shall supervise such personnel and shall prepare, approve, and submit all  
 4183 requests for appropriations and be responsible for all expenditures pursuant to appropriations.

4184 § 3.2-3202. Milk Commission membership terms.

4185 The Administrator of the Commission shall hold office at the pleasure of the Governor for a term  
 4186 concurrent with the term of the Governor making the appointment or until a successor to that  
 4187 Administrator is appointed by the next succeeding Governor. The remaining seven members shall be  
 4188 appointed by the Governor for a term of four years. No member except the Administrator may serve for  
 4189 more than two consecutive terms of four years each. Any member appointed to fill an interim vacancy  
 4190 may be appointed for two additional consecutive terms of four years each after the expiration of the  
 4191 term of the interim vacancy that the member filled. After an absence of two years from the Commission,  
 4192 any former member may be reappointed for a maximum of one additional term of four years.

4193 § 3.2-3203. Meetings; quorum.

4194 The Commission shall meet on the call of the chairman or three of its members whenever he or they  
 4195 may deem necessary, and at such place as he or they may designate. Three members of the Commission  
 4196 shall constitute a quorum.

4197 § 3.2-3204. General powers of the Milk Commission.

4198 The Commission shall be vested with the following powers:

4199 1. To confer and cooperate with the legally constituted authorities of other states and of the United  
 4200 States, with a view of securing a uniformity of milk control, with respect to milk coming into the  
 4201 Commonwealth and going out of the Commonwealth in interstate commerce, with a view of  
 4202 accomplishing the purposes of this chapter and to enter into a compact or compacts for such uniform  
 4203 system of milk control;

4204 2. To investigate all matters pertaining to the production, processing, storage, transportation,  
 4205 distribution, and sale of milk in the Commonwealth;

4206 3. To supervise, regulate, and control the production, transportation, processing, storage,  
 4207 distribution, delivery, and sale of milk for consumption within the Commonwealth;

4208 4. To act as mediator or arbiter in any controversial issue that may arise among or between milk  
 4209 producers and distributors, as between themselves, or that may arise between them as groups;

4210 5. To examine into the business, books, and accounts of any milk producer, association of producers,  
 4211 or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of  
 4212 producers, and milk distributors, and to require them to produce their records, books, and accounts; to  
 4213 subpoena any other person from whom information is desired;

4214 6. To take depositions of witnesses within, or without, the Commonwealth. Any member of the  
 4215 Commission, or any employee designated by the Commission, may administer oaths to witnesses and  
 4216 sign and issue subpoenas; and

4217 7. To make, adopt, and enforce all regulations or orders necessary to carry out the purposes of this  
 4218 chapter. Every order of the Commission shall be posted for inspection in the main office of the  
 4219 Commission, and a certified copy filed in the office of the Commissioner. An order, applying only to a  
 4220 person named therein, shall be served on the person affected. An order, that is required to be served,  
 4221 shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed  
 4222 envelope, with postage prepaid, to each person affected; or, in the case of a corporation, to any officer  
 4223 or agent of the corporation upon whom legal process may be served. If an order is not required to be  
 4224 served, then it shall be posted in the main office of the Commission and filed in the office of the  
 4225 Commissioner, which shall constitute due and sufficient notice to any person affected by the order.

4226 § 3.2-3205. Grant of specific power not to impair general power.

4227 Any provision of this chapter conferring a general power upon the Commission shall not be impaired  
 4228 or qualified by the granting to the Commission by this chapter of a specific power.

4229 § 3.2-3206. Public hearing required.

4230 A. The Commission shall neither exercise its powers in any market, nor withdraw the exercise of its  
 4231 powers from any market, until after a public hearing is held for such market, and the Commission  
 4232 determines whether it will be in the public interest to exercise its powers in that market.

4233 B. The Commission may on its own motion, call a public hearing as required under subsection A  
 4234 and shall call a public hearing upon the written application of a producers' association organized under  
 4235 Chapter 3 of Title 13.1 (§ 13.1-301 et seq.), supplying in the judgment of the Commission, a substantial  
 4236 proportion of the milk consumed in such market. If no such producers' association exists on such  
 4237 market, the Commission shall call a public hearing upon the written application of producers supplying  
 4238 a substantial proportion of the milk consumed in such market; and shall call a public hearing upon the  
 4239 written application of distributors distributing a substantial proportion of the milk consumed in that  
 4240 market.

4241 C. The Commission may determine notice requirements and the time and location of any public  
4242 hearing held under this section.

4243 § 3.2-3207. Defining market areas.

4244 The Commission may define a market area and define and fix the limits of the territorial area where  
4245 milk shall be produced to supply a market area. Any producers, producer-distributors, or their  
4246 successors currently shipping milk to any market may continue to do so until they voluntarily  
4247 discontinue shipping to the designated milk market.

4248 § 3.2-3208. Establishing prices generally.

4249 The Commission, after a public hearing and investigation, may establish the prices to be paid  
4250 producers or associations of producers by distributors in any market, may fix the minimum and  
4251 maximum wholesale and maximum retail prices to be charged for milk in any market, and may also  
4252 establish different prices for different grades or classes of milk. The Commission may set different  
4253 maximum retail prices for the same grade or class of milk on the basis of different methods of  
4254 distribution. In determining the reasonableness of prices to be paid or charged in any market for any  
4255 grade, quantity, or class of milk, the Commission shall be guided by all pertinent economic factors  
4256 relevant to production, processing, and distribution of milk as they affect the public interest in  
4257 maintaining an adequate supply of milk within the Commonwealth, including compliance with all  
4258 sanitary regulations in force in such market, necessary operation, processing, storage, and delivery  
4259 charges, the prices of other foods, and the welfare of the general public. The Commission may adopt a  
4260 formula incorporating these economic factors that will adjust automatically the prices to be paid  
4261 producers or associations of producers by distributors in any market, and then provide for the automatic  
4262 adjustment of resale prices according to the result obtained by the use of this formula. Public hearings  
4263 shall not be required for price adjustments obtained by use of a formula, but shall be held for adoption  
4264 or amendment of the formula itself.

4265 § 3.2-3209. Establishing minimum retail price; exemption.

4266 The Commission shall have no authority to establish a minimum retail price for milk, except upon a  
4267 determination after a public hearing that the absence of a minimum retail price has caused or is about  
4268 to cause a disruption in the Virginia milk market or some segment of the market that is likely to depress  
4269 the producer price or has caused or is likely to cause a substantial reduction in competition between  
4270 processor-distributors in an area, so as to adversely affect the public health and welfare that requires  
4271 an adequate supply of milk at reasonable and fair prices. In accordance with the Administrative Process  
4272 Act, § 2.2-4000 et seq. and in particular § 2.2-4002, the Commission may establish minimum retail  
4273 prices on an emergency basis, prior to public hearing.

4274 The Commission, in establishing any minimum retail price when it deems it necessary to do so, shall  
4275 impose a minimum retail price only for an area or political subdivision wherein the public interest as  
4276 herein set forth justifies a minimum retail price being set and shall be guided by the same factors used  
4277 in determining the reasonableness of prices under § 3.2-3208. The Commission shall periodically review  
4278 all outstanding minimum retail price orders to insure that they do not remain in effect any longer than  
4279 the public interest requires.

4280 § 3.2-3210. Accounting system for distributors; inspection and audit of books and records; offenses;  
4281 penalty.

4282 The Milk Commission shall prepare and adopt a system of accounting designed to show, for each  
4283 distributor of milk and milk products, under the supervision of the Commission, the total purchases by  
4284 any distributor of each grade or class of milk; the total sales by each distributor and the revenue  
4285 therefrom, for each grade or class of milk and the quantity thereof. Such accounting system shall be  
4286 designed to show total purchases including the respective grades or classes of milk bought, as well as  
4287 the total sales and the respective classes or grades of milk sold.

4288 Each distributor of milk and milk products under the supervision of the Commission shall adopt and  
4289 use the system of accounting adopted by the Milk Commission. The books and records of each  
4290 distributor shall be open to inspection by the Commission or its agents during regular business hours,  
4291 and shall be audited by it at such regular intervals as shall be prescribed by the Milk Commission.

4292 It shall be unlawful for any distributor to pay for milk upon any such basis of grade or class lower  
4293 than that upon which such milk is sold or used by him. Nothing herein shall prevent the sale of a grade  
4294 or class of milk by a distributor as milk of a lower grade or class. It shall be unlawful for any  
4295 distributor to fail to use the system of accounting herein prescribed or refuse to allow the same to be  
4296 inspected or audited.

4297 § 3.2-3211. Right of entry and inspection; publication of information.

4298 Any Commission employee designated for the purpose, shall have access to, and may enter at all  
4299 reasonable hours, all places where milk is stored, bottled, or manufactured into food products and any  
4300 designated employee shall have the power to inspect books and records in any place within the  
4301 Commonwealth for the purpose of ascertaining facts to enable the Commission to administer this  
4302 chapter. All information ascertained shall be confidential, unless the parties concerned agree to its

4303 *being given out. The Commission may combine such information for any market and make it public.*

4304 § 3.2-3212. Licenses generally.

4305 *The Commission may require all distributors in any market designated by the Commission to be*  
 4306 *licensed by the Commission for the purpose of carrying out the provisions of this chapter. The*  
 4307 *Commission may decline to grant a license, or may suspend or revoke a license already granted upon*  
 4308 *due notice and after a hearing. The Commission may classify licenses, and may issue licenses to*  
 4309 *distributors to process or store or sell milk to a particular city or to a particular market within the*  
 4310 *Commonwealth.*

4311 § 3.2-3213. Report of licensees.

4312 *Each licensee shall furnish to the Commission verified reports containing information as required by*  
 4313 *the Commission.*

4314 § 3.2-3214. Unlawful buying and selling.

4315 *No distributor in a market covered by the provisions of this chapter shall buy milk from producers,*  
 4316 *or others, for sale within the Commonwealth, or sell or distribute milk within the Commonwealth, unless*  
 4317 *the distributor is duly licensed under the provisions of this chapter. It shall be unlawful for a distributor*  
 4318 *to buy milk from or sell milk to a distributor who is not licensed as required by this chapter. It shall be*  
 4319 *unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe it has*  
 4320 *previously been dealt in, or handled, in violation of the terms and provisions of this chapter.*

4321 § 3.2-3215. Application for license.

4322 *Each distributor shall submit an application to the Commission for a license to operate as a*  
 4323 *distributor by mail, or otherwise, within five days after the provisions of this chapter become effective in*  
 4324 *a market. Thereafter, any distributor shall obtain a license to operate as a distributor before beginning*  
 4325 *business in that market. The application shall be made on forms furnished by the Commission.*

4326 § 3.2-3216. Licenses to be in addition to those required by existing laws.

4327 *The licenses required by this chapter shall be in addition to any other licenses required by existing*  
 4328 *laws of the Commonwealth or by any municipal ordinance.*

4329 § 3.2-3217. Appeals generally.

4330 *A. Any person affected by and claiming the unlawfulness of any regulation of the Commission, or*  
 4331 *person aggrieved by and claiming the unlawfulness of a case decision or an order of the Commission*  
 4332 *may appeal to the Circuit Court where the principal office of the Commission is located. Except as*  
 4333 *otherwise provided in this section, Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act shall*  
 4334 *govern such appeal.*

4335 *B. Upon filing of its pleadings by the Commission the cause shall be matured for hearing, and upon*  
 4336 *application of either party, the cause shall be placed at the head of the docket and heard forthwith.*

4337 *C. Mere technical irregularities in the procedure of the Commission shall not be the basis of the*  
 4338 *decision of the court. In an appeal from an order or decision of the Commission, the case shall be*  
 4339 *heard upon the record certified to the court by the Commission. Additional testimony shall not be taken*  
 4340 *before the court, except to clarify the record or to introduce evidence as to the effect of the order upon*  
 4341 *the business of parties to the record below, or of producers standing in the same position as producer*  
 4342 *parties of record, but the court may, in proper cases, remand the record of the Commission for the*  
 4343 *taking of such further testimony as was not available upon the hearing appealed from, or such other*  
 4344 *testimony as the court shall provide may be taken. No part of the record, containing verbal or*  
 4345 *documentary evidence, shall be disregarded by courts because of technical rules of evidence.*

4346 § 3.2-3218. Penalties for failure to comply with subpoenas; compelling obedience.

4347 *Any person failing to comply with any subpoena issued by the Commission or pursuant to its*  
 4348 *authority is guilty of a Class 2 misdemeanor, and each day during which such violation shall continue*  
 4349 *shall be deemed a separate offense. In the event any person shall fail to comply with any regulation or*  
 4350 *order of the Commission, or obey any subpoena issued, or in the event of the refusal of any witness to*  
 4351 *testify to any matter concerning which he lawfully may be interrogated by the Commission or its*  
 4352 *representative, it shall be the duty of the Circuit Court where the principal offices of the Commission*  
 4353 *are located, upon application of the Commission, to compel obedience by attachment proceedings for*  
 4354 *contempt as in the case of disobedience of the requirements of a subpoena issued from the court, refusal*  
 4355 *to testify therein, or disobedience of an order or decree of the court. The proceedings herein authorized*  
 4356 *in the Circuit Court to compel obedience shall be in addition to the provisions of this section defining*  
 4357 *what shall constitute a misdemeanor and providing and prescribing the punishment therefor.*

4358 § 3.2-3219. Annual budget; assessment of distributors and producers; bond requirements.

4359 *The Commission shall prepare an annual budget and shall collect the sums of money required for*  
 4360 *this budget from the licensed distributors in markets where the provisions of this chapter are in*  
 4361 *operation. The expenses of the Commission, including salaries and the per diem of such personnel as*  
 4362 *the Commission finds it necessary to employ to properly carry out its functions under this chapter shall*  
 4363 *be met by an assessment of not over five cents (\$.05) per 100 pounds of milk, and cream (converted to*

4364 terms of milk) handled by distributors and not over five cents (\$0.05) per 100 pounds of milk, and  
 4365 cream (converted to terms of milk) sold by producers; these assessments to be the same per 100 pounds  
 4366 on producers and distributors. The exact amount of each monthly or semimonthly assessment shall be  
 4367 determined by the Commission as necessary to cover its expenses. All assessments shall be paid at the  
 4368 time the distributors pay the producers for the milk. All officers and employees of the Commission, who  
 4369 handle funds of the Commission or who sign or countersign checks upon such funds, shall severally give  
 4370 bond in such amount and with such sureties as shall be determined by the Commission. The cost of the  
 4371 bonds shall be paid by the Commission and the Commission shall determine the amount and sufficiency  
 4372 of the bonds.

4373 § 3.2-3220. Virginia Milk Commission Assessments Fund established.

4374 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
 4375 Milk Commission Assessments Fund, hereafter referred to as "the Fund." The Fund shall be established  
 4376 on the books of the Comptroller. All receipts from assessments paid under this chapter shall be paid  
 4377 into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in  
 4378 the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the  
 4379 end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the  
 4380 Fund shall be used solely for the purposes of administering this chapter. Expenditures and  
 4381 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the  
 4382 Comptroller upon written request signed by the Administrator or his duly authorized agent.

4383 § 3.2-3221. Injunction.

4384 If any person violates any provision of this chapter or the regulations adopted under this chapter,  
 4385 then either the Commissioner or the State Health Commissioner may petition any appropriate circuit for  
 4386 relief by injunction, without being compelled to allege or prove that an adequate remedy at law does  
 4387 not exist.

4388 § 3.2-3222. Penalties.

4389 Any person violating any provision of this chapter or of any license issued by the Commission is  
 4390 guilty of a Class 2 misdemeanor. Each day during which such violation shall continue shall be deemed  
 4391 a separate violation. Prosecutions shall be instituted by the attorney for the Commonwealth.

4392 § 3.2-3223. Marketing agreements not deemed monopolistic or in restraint of trade.

4393 The making of marketing agreements between producers' cooperative marketing associations and  
 4394 distributors and producer-distributors under the provisions of this chapter shall not be deemed a  
 4395 combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix  
 4396 prices arbitrarily, nor shall the marketing contract or agreements between the association and the  
 4397 distributors and producer-distributors, or any agreements authorized in this chapter, be considered  
 4398 illegal or in restraint of trade.

4399 § 3.2-3224. Chapter inapplicable to interstate commerce.

4400 No provision of this chapter shall apply or be construed to apply to foreign or interstate commerce,  
 4401 except insofar as the same may be effective pursuant to the United States Constitution and to the laws  
 4402 of the United States enacted pursuant thereto.

#### 4403 CHAPTER 33.

#### 4404 SOUTHERN DAIRY COMPACT.

4405 § 3.2-3300. Southern Dairy Compact; form of compact.

4406 The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally  
 4407 joining therein in the form substantially as follows:

4408 ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy.

4409 § 1. Statement of purpose, findings, and declaration of policy.

4410 The purpose of this compact is to recognize the interstate character of the southern dairy industry  
 4411 and the prerogative of the states under the United States Constitution to form an interstate commission  
 4412 for the southern region. The mission of the Commission is to take such steps as are necessary to assure  
 4413 the continued viability of dairy farming in the South, and to assure consumers of an adequate, local  
 4414 supply of pure and wholesome milk.

4415 The participating states find and declare that the dairy industry is an essential agricultural activity  
 4416 of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral  
 4417 component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome  
 4418 milk is a matter of great importance to the health and welfare of the region.

4419 The participating states further find that dairy farms are essential, and they are an integral part of  
 4420 the region's rural communities. The farms preserve land for agricultural purposes and provide needed  
 4421 economic stimuli for rural communities.

4422 By entering into this compact, the participating states affirm that their ability to regulate the price  
 4423 that southern dairy farmers receive for their product is essential to the public interest. Assurance of a  
 4424 fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the  
 4425 vitality of the southern dairy industry, with all the associated benefits.



4426 *Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and*  
 4427 *stability of the southern dairy region. Historically, individual state regulatory action had been an*  
 4428 *effective emergency remedy available to farmers confronting a distressed market. The system of federal*  
 4429 *orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum*  
 4430 *prices paid to producers for raw milk, without preempting the power of states to regulate milk prices*  
 4431 *above the minimum levels so established.*

4432 *In today's regional dairy marketplace, cooperative, rather than individual state action is needed to*  
 4433 *more effectively address the market disarray. Under our constitutional system, properly authorized states*  
 4434 *acting cooperatively may exercise more power to regulate interstate commerce than they may assert*  
 4435 *individually without such authority. For this reason, the participating states invoke their authority to act*  
 4436 *in common agreement, with the consent of Congress, under the compact clause of the Constitution.*

4437 *In establishing their constitutional regulatory authority over the region's fluid milk market by this*  
 4438 *compact, the participating states declare their purpose that this compact neither displace the system of*  
 4439 *federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set*  
 4440 *forth this basic principle.*

4441 *Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact*  
 4442 *also contains a contingency provision should the system of federal orders be discontinued. In that event,*  
 4443 *the interstate commission may regulate the marketplace in lieu of the system of federal orders. This*  
 4444 *contingent authority does not anticipate such a change, however, and should not be so construed. It is*  
 4445 *only provided should developments in the market other than establishment of this compact result in*  
 4446 *discontinuance of the system of federal orders.*

4447 *ARTICLE II. Definitions and Rules of Construction.*

4448 *§ 2. Definitions.*

4449 *For the purposes of this compact, and of any supplemental or concurring legislation enacted*  
 4450 *pursuant thereto, except as may be otherwise required by the context:*

4451 *"Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further*  
 4452 *definition in accordance with the principles expressed in subsection (b) of § 3.*

4453 *"Commission" means the Southern Dairy Compact Commission established by this compact.*

4454 *"Commission marketing order" means regulations adopted by the Commission pursuant to §§ 9 and*  
 4455 *10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such*  
 4456 *order may apply throughout the region or in any part or parts thereof as defined in the regulations of*  
 4457 *the Commission. Such order may establish minimum prices for any or all classes of milk.*

4458 *"Compact" means this interstate compact.*

4459 *"Compact over-order price" means a minimum price required to be paid to producers for Class I*  
 4460 *milk established by the Commission in regulations adopted pursuant to §§ 9 and 10 of this compact,*  
 4461 *which is above the price established in federal marketing orders or by state farm price regulation in the*  
 4462 *regulated area. Such price may apply throughout the region or in any part or parts thereof as defined*  
 4463 *in the regulations of the Commission.*

4464 *"Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents*  
 4465 *obtained from separation or any other process. The term is used in its broadest sense and may be*  
 4466 *further defined by the Commission for regulatory purposes.*

4467 *"Partially regulated plant" means a milk plant not located in a regulated area but having Class I*  
 4468 *distribution within such area. Commission regulations may exempt plants having such distribution or*  
 4469 *receipts in amounts less than the limits defined therein.*

4470 *"Participating state" means a state which has become a party to this compact by the enactment of*  
 4471 *concurring legislation.*

4472 *"Pool plant" means any milk plant located in a regulated area.*

4473 *"Region" means the territorial limits of the states which are parties to this compact.*

4474 *"Regulated area" means any area within the region governed by and defined in regulations*  
 4475 *establishing a compact over-order price or commission marketing order.*

4476 *"State dairy regulation" means any state regulation of dairy prices and associated assessments,*  
 4477 *whether by statute, marketing order, or otherwise.*

4478 *§ 3. Rules of construction.*

4479 *(a) This compact shall not be construed to displace existing federal milk marketing orders or state*  
 4480 *dairy regulation in the region but to supplement them. In the event some or all federal orders in the*  
 4481 *region are discontinued, the compact shall be construed to provide the Commission the option to*  
 4482 *replace them with one or more commission marketing orders pursuant to this compact.*

4483 *(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated*  
 4484 *in § 1. It is the intent of this compact to establish a basic structure by which the Commission may*  
 4485 *achieve those purposes through the application, adaptation, and development of the regulatory*  
 4486 *techniques historically associated with milk marketing and to afford the Commission broad flexibility to*

4487 *devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent,*  
 4488 *the technical terms which are associated with market order regulation and which have acquired*  
 4489 *commonly understood general meanings are not defined herein but the Commission may further define*  
 4490 *the terms used in this compact and develop additional concepts and define additional terms as it may*  
 4491 *find appropriate to achieve its purposes.*

4492 *ARTICLE III. Commission Established.*

4493 *§ 4. Commission established.*

4494 *There is hereby created a commission to administer the compact, composed of delegations from each*  
 4495 *state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A*  
 4496 *delegation shall include not less than three nor more than five persons. Each delegation shall include at*  
 4497 *least one dairy farmer who is engaged in the production of milk at the time of appointment or*  
 4498 *reappointment, and one consumer representative. Delegation members shall be residents and voters of,*  
 4499 *and subject to such confirmation process as is provided for in, the appointing state. Delegation members*  
 4500 *shall serve no more than three consecutive terms with no single term of more than four years, and be*  
 4501 *subject to removal for cause. In all other respects, delegation members shall serve in accordance with*  
 4502 *the laws of the state represented. The compensation, if any, of the members of a state delegation shall*  
 4503 *be determined and paid by each state, but their expenses shall be paid by the Commission.*

4504 *§ 5. Voting requirements.*

4505 *All actions taken by the Commission, except for the establishment or termination of an over-order*  
 4506 *price or commission marketing order, and the adoption, amendment, or rescission of the Commission's*  
 4507 *bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to*  
 4508 *one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price*  
 4509 *or commission marketing order shall require at least a two-thirds vote of the delegations present. The*  
 4510 *establishment of a regulated area that covers all or part of a participating state shall require also the*  
 4511 *affirmative vote of that state's delegation. A majority of the delegations from the participating states*  
 4512 *shall constitute a quorum for the conduct of the Commission's business.*

4513 *§ 6. Administration and management.*

4514 *(a) The Commission shall elect annually from among the members of the participating state*  
 4515 *delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an*  
 4516 *executive director and fix his or her duties and compensation. The executive director shall serve at the*  
 4517 *pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined*  
 4518 *by the Commission. The Commission may establish through its bylaws an executive committee composed*  
 4519 *of one member elected by each delegation.*

4520 *(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall*  
 4521 *have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its*  
 4522 *bylaws in convenient form with the appropriate agency or officer in each of the participating states. The*  
 4523 *bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings*  
 4524 *and of the business to be transacted at such meetings or hearings. Notice also shall be given to other*  
 4525 *agencies or officers of participating states as provided by the laws of those states.*

4526 *(c) The Commission shall file an annual report with the Secretary of Agriculture of the United*  
 4527 *States, and with each of the participating states by submitting copies to the Governor, both houses of*  
 4528 *the legislature, and the head of the state department having responsibilities for agriculture.*

4529 *(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may*  
 4530 *engage in all of the following:*

4531 *(1) Sue and be sued in any state or federal court.*

4532 *(2) Have a seal and alter the same at pleasure.*

4533 *(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or*  
 4534 *other similar manner, for its corporate purposes.*

4535 *(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge*  
 4536 *the revenue of the Commission as security therefor, subject to the provisions of § 18 of this compact.*

4537 *(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers,*  
 4538 *duties, and qualifications.*

4539 *(6) Create and abolish such offices, employments, and positions as it deems necessary for the*  
 4540 *purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits,*  
 4541 *pension, and retirement rights of its officers and employees.*

4542 *(7) Retain personal services on a contract basis.*

4543 *§ 7. Rule-making power.*

4544 *In addition to the power to promulgate a compact over-order price or commission marketing orders*  
 4545 *as provided by this compact, the Commission is further empowered to make and enforce such additional*  
 4546 *rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate*  
 4547 *in any other respect the purposes of this compact.*

4548 *ARTICLE IV. Powers of the Commission.*

4549 § 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

4550 The Commission may:

4551 (1) Investigate or provide for investigations or research projects designed to review the existing laws  
4552 and regulations of the participating states, to consider their administration and costs, and to measure  
4553 their impact on the production and marketing of milk and their effects on the shipment of milk and milk  
4554 products within the region.

4555 (2) Study and recommend to the participating states joint or cooperative programs for the  
4556 administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and  
4557 benefits of such programs.

4558 (3) Encourage the harmonious relationships between the various elements in the industry for the  
4559 solution of their material problems. Conduct symposia or conferences designed to improve industry  
4560 relations, or a better understanding of problems.

4561 (4) Prepare and release periodic reports on activities and results of the Commission's efforts to the  
4562 participating states.

4563 (5) Review the existing marketing system for milk and milk products and recommend changes in the  
4564 existing structure for assembly and distribution of milk which may assist, improve, or promote more  
4565 efficient assembly and distribution of milk.

4566 (6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling,  
4567 and for all other services, performed with respect to milk.

4568 (7) Examine current economic forces affecting producers, probable trends in production and  
4569 consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers,  
4570 and the need for an emergency order to relieve critical conditions on dairy farms.

4571 § 9. Equitable farm prices.

4572 (a) The powers granted in this section and § 10 shall apply only to the establishment of a compact  
4573 over-order price, so long as federal milk marketing orders remain in effect in the region. In the event  
4574 that any or all such orders are terminated, this article authorizes the Commission to establish one or  
4575 more commission marketing orders, as herein provided, in the region or parts thereof as defined in the  
4576 order.

4577 (b) A compact over-order price established pursuant to this section shall apply only to Class I milk.  
4578 Such compact over-order price shall not exceed one dollar and fifty cents (\$1.50) per gallon at Atlanta,  
4579 Georgia, however, this compact over-order price shall be adjusted upward or downward at other  
4580 locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and  
4581 using that year as a base, the foregoing one dollar and fifty cents (\$1.50) per gallon maximum shall be  
4582 adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of  
4583 Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization  
4584 of an over-order price, the value of milk used in other use classifications shall be calculated at the  
4585 appropriate class price established pursuant to the applicable federal order or state dairy regulation  
4586 and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in  
4587 accordance with and subject to such adjustments as the Commission may prescribe in regulations.

4588 (c) A commission marketing order shall apply to all classes and uses of milk.

4589 (d) The Commission may establish a compact over-order price for milk to be paid by pool plants and  
4590 partially regulated plants. The Commission also may establish a compact over-order price to be paid by  
4591 all other handlers receiving milk from producers located in a regulated area. This price shall be  
4592 established either as a compact over-order price or by one or more commission marketing orders.  
4593 Whenever such a price has been established by either type of regulation, the legal obligation to pay  
4594 such price shall be determined solely by the terms and purpose of the regulation without regard to the  
4595 situs of the transfer of title, possession, or any other factors not related to the purposes of the  
4596 regulation and this compact. Producer-handlers as defined in an applicable federal market order shall  
4597 not be subject to a compact over-order price. The Commission shall provide for similar treatment of  
4598 producer-handlers under commission marketing orders.

4599 (e) In determining the price, the Commission shall consider the balance between production and  
4600 consumption of milk and milk products in the regulated area, the costs of production including, but not  
4601 limited to, the price of feed, the cost of labor including the reasonable value of the producer's own  
4602 labor and management, machinery expense and interest expense, the prevailing price for milk outside  
4603 the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable  
4604 return to the producer and distributor.

4605 (f) When establishing a compact over-order price, the Commission shall take such other action as is  
4606 necessary and feasible to help ensure that the over-order price does not cause or compensate producers  
4607 so as to generate local production of milk in excess of those quantities necessary to assure consumers of  
4608 an adequate supply for fluid purposes.

4609 (g) The Commission shall whenever possible enter into agreements with state or federal agencies for

4610 exchange of information or services for the purpose of reducing regulatory burden and cost of  
4611 administering the compact. The Commission may reimburse other agencies for the reasonable cost of  
4612 providing these services.

4613 § 10. Optional provisions for pricing order.

4614 Regulations establishing a compact over-order price or a commission marketing order may contain,  
4615 but shall not be limited to, any of the following:

4616 (1) Provisions classifying milk in accordance with the form in which or purpose for which it is used,  
4617 or creating a flat pricing program.

4618 (2) With respect to a commission marketing order only, provisions establishing or providing a  
4619 method for establishing separate minimum prices for each use classification prescribed by the  
4620 Commission, or a single minimum price for milk purchased from producers or associations of  
4621 producers.

4622 (3) With respect to an over-order minimum price, provisions establishing or providing a method for  
4623 establishing such minimum price for Class I milk.

4624 (4) Provisions for establishing either an over-order price or a commission marketing order may  
4625 make use of any reasonable method for establishing such price or prices including flat pricing and  
4626 formula pricing. Provision may also be made for location adjustments, zone differentials, and  
4627 competitive credits with respect to regulated handlers who market outside the regulated area.

4628 (5) Provisions for the payment to all producers and associations of producers delivering milk to all  
4629 handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the  
4630 individual handler to whom it is delivered, or for the payment of producers delivering milk to the same  
4631 handler of uniform prices for all milk delivered by them.

4632 a. With respect to regulations establishing a compact over-order price, the Commission may establish  
4633 one equalization pool within the regulated area for the sole purpose of equalizing returns to producers  
4634 throughout the regulated area.

4635 b. With respect to any commission marketing order, as defined in § 2, subdivision (3), which replaces  
4636 one or more terminated federal orders or state dairy regulation, the marketing area of now separate  
4637 state or federal orders shall not be merged without the affirmative consent of each state, voting through  
4638 its delegation, which is partly or wholly included within any such new marketing area.

4639 (6) Provisions requiring persons who bring Class I milk into the regulated area to make  
4640 compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk  
4641 purchased by handlers subject to a compact over-order price or commission marketing order. No such  
4642 provisions shall discriminate against milk producers outside the regulated area. The provisions for  
4643 compensatory payments may require payment of the difference between the Class I price required to be  
4644 paid for such milk in the state of production by a federal milk marketing order or state dairy regulation  
4645 and the Class I price established by the compact over-order price or commission marketing order.

4646 (7) Provisions specially governing the pricing and pooling of milk handled by partially regulated  
4647 plants.

4648 (8) Provisions requiring that the account of any person regulated under the compact over-order  
4649 price shall be adjusted for any payments made to or received by such persons with respect to a  
4650 producer settlement fund of any federal or state milk marketing order or other state dairy regulation  
4651 within the regulated area.

4652 (9) Provision requiring the payment by handlers of an assessment to cover the costs of the  
4653 administration and enforcement of such order pursuant to subsection (a) of § 18 of Article VII.

4654 (10) Provisions for reimbursement to participants of the Women, Infants and Children Special  
4655 Supplemental Food Program of the United States Child Nutrition Act of 1966.

4656 (11) Other provisions and requirements as the Commission may find are necessary or appropriate to  
4657 effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum  
4658 prices to producers.

4659 ARTICLE V. Rule-Making Procedure.

4660 § 11. Rule-making procedure.

4661 Before promulgation of any regulations establishing a compact over-order price or commission  
4662 marketing order, including any provision with respect to milk supply under subsection (f) of § 9, or  
4663 amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making  
4664 proceeding to provide interested persons with an opportunity to present data and views. Such  
4665 rule-making proceeding shall be governed by § 4 of the Federal Administrative Procedure Act, as  
4666 amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of  
4667 rule-making proceedings in the official register of each participating state. Before the initial adoption of  
4668 regulations establishing a compact over-order price or a commission marketing order and thereafter  
4669 before any amendment with regard to prices or assessments, the Commission shall hold a public  
4670 hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its  
4671 sole discretion act upon the petition of any person including individual milk producers, any organization

4672 of milk producers or handlers, general farm organizations, consumer or public interest groups, and  
4673 local, state or federal officials.

4674 § 12. Findings and referendum.

4675 (a) In addition to the concise general statement of basis and purpose required by § 4(b) of the  
4676 Federal Administrative Procedure Act, as amended (5 U.S.C. § 553 (c)), the Commission shall make  
4677 findings of fact with respect to:

4678 (1) Whether the public interest will be served by the establishment of minimum milk prices to dairy  
4679 farmers under Article IV.

4680 (2) What level of prices will assure that producers receive a price sufficient to cover their costs of  
4681 production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for  
4682 manufacturing purposes.

4683 (3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in  
4684 the public interest and are reasonably designed to achieve the purposes of the order.

4685 (4) Whether the terms of the proposed regional order or amendment are approved by producers as  
4686 provided in § 13.

4687 § 13. Producer referendum.

4688 (a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a  
4689 compact over-order price or a commission marketing order, including any provision with respect to milk  
4690 supply under subsection (f) of § 9, is approved by producers, the Commission shall conduct a  
4691 referendum among producers. The referendum shall be held in a timely manner, as determined by  
4692 regulation of the Commission. The terms and conditions of the proposed order or amendment shall be  
4693 described by the Commission in the ballot used in the conduct of the referendum, but the nature,  
4694 content, or extent of such description shall not be a basis for attacking the legality of the order or any  
4695 action relating thereto.

4696 (b) An order or amendment shall be deemed approved by producers if the Commission determines  
4697 that it is approved by at least two-thirds of the voting producers who, during a representative period  
4698 determined by the Commission, have been engaged in the production of milk the price of which would  
4699 be regulated under the proposed order or amendment.

4700 (c) For purposes of any referendum, the Commission shall consider the approval or disapproval by  
4701 any cooperative association of producers, qualified under the provisions of the Act of Congress of  
4702 February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing  
4703 milk, or in rendering services for or advancing the interests of producers of such commodity, as the  
4704 approval or disapproval of the producers who are members or stockholders in, or under contract with,  
4705 such cooperative association of producers, except as provided in subdivision (1) of this subsection and  
4706 subject to the provisions of subdivisions (2) through (5) of this subsection.

4707 (1) No cooperative that has been formed to act as a common marketing agency for both cooperatives  
4708 and individual producers shall be qualified to block vote for either.

4709 (2) Any cooperative that is qualified to block vote shall, before submitting its approval or  
4710 disapproval in any referendum, give prior written notice to each of its members as to whether and how  
4711 it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form  
4712 prescribed, by the Commission.

4713 (3) Any producer may obtain a ballot from the Commission in order to register approval or  
4714 disapproval of the proposed order.

4715 (4) A producer who is a member of a cooperative which has provided notice of its intent to approve  
4716 or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her  
4717 approval or disapproval of the proposed order, shall notify the Commission as to the name of the  
4718 cooperative of which he or she is a member, and the Commission shall remove such producer's name  
4719 from the list certified by such cooperative with its corporate vote.

4720 (5) In order to ensure that all milk producers are informed regarding a proposed order, the  
4721 Commission shall notify all milk producers that an order is being considered and that each producer  
4722 may register his or her approval or disapproval with the Commission either directly or through his or  
4723 her cooperative.

4724 § 14. Termination of over-order price or marketing order.

4725 (a) The Commission shall terminate any regulations establishing an over-order price or commission  
4726 marketing order issued under this Article whenever it finds that such order or price obstructs or does  
4727 not tend to effectuate the declared policy of this compact.

4728 (b) The Commission shall terminate any regulations establishing an over-order price or a  
4729 commission marketing order issued under this Article whenever it finds that such termination is favored  
4730 by a majority of the producers who, during a representative period determined by the Commission, have  
4731 been engaged in the production of milk, the price of which is regulated by such order; but such  
4732 termination shall be effective only if announced on or before such date as may be specified in such

4733 marketing agreement or order.

4734 (c) The termination or suspension of any order or provision thereof, shall not be considered an order  
4735 within the meaning of this Article and shall require no hearing, but shall comply with the requirements  
4736 for informal rule making prescribed by § 4 of the Federal Administrative Procedure Act, as amended (5  
4737 U.S.C. § 553).

4738 ARTICLE VI. Enforcement.

4739 § 15. Records, reports, access to premises.

4740 (a) The Commission may by rule and regulation prescribe record keeping and reporting requirements  
4741 for all regulated persons. For purposes of the administration and enforcement of this compact, the  
4742 Commission may examine the books and records of any regulated person relating to his or her milk  
4743 business and for that purpose, the Commission's properly designated officers, employees, or agents shall  
4744 have full access during normal business hours to the premises and records of all regulated persons.

4745 (b) Information furnished to or acquired by the Commission officers, employees, or its agents  
4746 pursuant to this section shall be confidential and not subject to disclosure except to the extent that the  
4747 Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the  
4748 administration or enforcement of this compact, an over-order price, a compact marketing order, or other  
4749 regulations of the Commission. The Commission may adopt rules further defining the confidentiality of  
4750 information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance  
4751 of general statements based upon the reports of a number of handlers, which do not identify the  
4752 information furnished by any person, or (ii) the publication by direction of the Commission of the name  
4753 of any person violating any regulation of the Commission, together with a statement of the particular  
4754 provisions violated by such person.

4755 (c) No officer, employee, or agent of the Commission shall intentionally disclose information, by  
4756 inference or otherwise, that is made confidential pursuant to this section. Any person violating the  
4757 provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand  
4758 dollars (\$1,000) or to imprisonment for not more than one year, or both, and shall be removed from  
4759 office. The Commission shall refer any allegation of a violation of this section to the appropriate state  
4760 enforcement authority or United States Attorney.

4761 § 16. Subpoena, hearings, and judicial review.

4762 (a) The Commission is hereby authorized and empowered by its members and its properly designated  
4763 officers to administer oaths and issue subpoenas throughout all signatory states to compel the  
4764 attendance of witnesses and the giving of testimony and the production of other evidence.

4765 (b) Any handler subject to an order may file a written petition with the Commission stating that any  
4766 order or any provision of any such order or any obligation imposed in connection therewith is not in  
4767 accordance with law and praying for a modification thereof or to be exempted therefrom. The handler  
4768 shall thereupon be given an opportunity for a hearing upon such petition, in accordance with  
4769 regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the  
4770 prayer of such petition which shall be final, if in accordance with law.

4771 (c) The district courts of the United States in any district in which the handler is an inhabitant, or  
4772 has his or her principal place of business, are hereby vested with jurisdiction to review such ruling,  
4773 provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling.  
4774 Service of process in these proceedings may be had upon the Commission by delivering to it a copy of  
4775 the complaint. If the court determines that the ruling is not in accordance with law, it shall remand  
4776 such proceedings to the Commission with directions either (i) to make such ruling as the court shall  
4777 determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the  
4778 law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede,  
4779 hinder, or delay the Commission from obtaining relief pursuant to § 17. Any proceedings brought  
4780 pursuant to § 17, except where brought by way of counterclaim in proceedings instituted pursuant to  
4781 this section, shall abate whenever a final decree has been rendered in proceedings between the same  
4782 parties, and covering the same subject matter, instituted pursuant to this section.

4783 § 17. Enforcement with respect to handlers.

4784 (a) Any violation by a handler of the provisions of regulation establishing an over-order price or a  
4785 commission marketing order, or other regulations adopted pursuant to this compact shall:

4786 (1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the  
4787 violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the  
4788 participating states, recoverable in any state or federal court of competent jurisdiction. Each day such  
4789 violation continues shall constitute a separate violation.

4790 (2) Constitute grounds for the revocation of license or permit to engage in the milk business under  
4791 the applicable laws of the participating states.

4792 (b) With respect to handlers, the Commission shall enforce the provisions of this compact,  
4793 regulations establishing an over-order price, a commission marketing order or other regulations adopted  
4794 hereunder by:

4795 (1) Commencing an action for legal or equitable relief brought in the name of the Commission in  
4796 any state or federal court of competent jurisdiction; or

4797 (2) Referral to the state agency for enforcement by judicial or administrative remedy with the  
4798 agreement of the appropriate state agency of a participating state.

4799 (c) With respect to handlers, the Commission may bring an action for injunction to enforce the  
4800 provisions of this compact or the order or regulations adopted thereunder without being compelled to  
4801 allege or prove that an adequate remedy of law does not exist.

4802 ARTICLE VII. Finance.

4803 § 18. Finance of start-up and regular costs.

4804 (a) To provide for its start-up costs, the Commission may borrow money pursuant to its general  
4805 power under § 6, subsection (d), subdivision 4. In order to finance the cost of administration and  
4806 enforcement of this compact, including payback of start-up costs, the Commission may collect an  
4807 assessment from each handler who purchases milk from producers within the region. If imposed, this  
4808 assessment shall be collected on a monthly basis for up to one year from the date the Commission  
4809 convenes, in an amount not to exceed \$.015 per hundred weight of milk purchased from producers  
4810 during the period of the assessment. The initial assessment may apply to the projected purchases of  
4811 handlers for the two-month period following the date the Commission convenes. In addition, if  
4812 regulations establishing an over-order price or a compact marketing order are adopted, they may  
4813 include an assessment for the specific purpose of their administration. These regulations shall provide  
4814 for establishment of a reserve for the Commission's ongoing operating expenses.

4815 (b) The Commission shall not pledge the credit of any participating state or of the United States.  
4816 Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole  
4817 responsibility and no participating state or the United States shall be liable therefor.

4818 § 19. Audit and accounts.

4819 (a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be  
4820 subject to the audit and accounting procedures established under its rules. In addition, all receipts and  
4821 disbursements of funds handled by the Commission shall be audited yearly by a qualified public  
4822 accountant and the report of the audit shall be included in and become part of the annual report of the  
4823 Commission.

4824 (b) The accounts of the Commission shall be open at any reasonable time for inspection by duly  
4825 constituted officers of the participating states and by any persons authorized by the Commission.

4826 (c) Nothing contained in this Article shall be construed to prevent commission compliance with laws  
4827 relating to audit or inspection of accounts by or on behalf of any participating state or of the United  
4828 States.

4829 ARTICLE VIII. Entry into Force; Additional Members and Withdrawal.

4830 § 20. Entry into force; additional members.

4831 The compact shall enter into force effective when enacted into law by any three states of the group  
4832 of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland,  
4833 Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia  
4834 and when the consent of Congress has been obtained.

4835 § 21. Withdrawal from compact.

4836 Any participating state may withdraw from this compact by enacting a statute repealing the same,  
4837 but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given  
4838 to the Commission and the governors of all the participating states. No withdrawal shall affect any  
4839 liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

4840 § 22. Severability.

4841 If any part or provision of this compact is adjudged invalid by any court, such judgment shall be  
4842 confined in its operation to the part or provision directly involved in the controversy in which such  
4843 judgment shall have been rendered and shall not affect or impair the validity of the remainder of this  
4844 compact. In the event Congress consents to this compact subject to conditions, said conditions shall not  
4845 impair the validity of this compact when said conditions are accepted by three or more compacting  
4846 states. A compact state may accept the conditions of Congress by implementation of this compact.

4847 § 3.2-3301. Southern Dairy Compact Commission members.

4848 The Governor shall appoint five delegates from Virginia to represent the Commonwealth on the  
4849 Southern Dairy Compact Commission, including two dairy farmers who are engaged in the production  
4850 of milk, two consumer representatives, and one dairy processor. The Governor's appointments shall be  
4851 subject to confirmation by the General Assembly. Initial appointments shall be one dairy farmer, one  
4852 consumer representative, and one dairy processor each for a term of four years and one dairy farmer  
4853 and one consumer representative each for a term of two years. Thereafter, delegates shall be appointed  
4854 for four-year terms. No delegate shall serve more than three consecutive terms. Vacancies in the  
4855 membership of the delegation shall be filled by the Governor for the unexpired term.

4856 § 3.2-3302. *Cooperation of departments, agencies, and officers of the Commonwealth.*

4857 *All departments, agencies, and officers of the Commonwealth and its political subdivisions are*  
 4858 *hereby authorized to cooperate with the Southern Dairy Compact Commission in furtherance of any of*  
 4859 *its activities pursuant to the Compact.*

4860 § 3.2-3303. *Milk Commission powers preserved.*

4861 *Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the*  
 4862 *Milk Commission established by Chapter 32 of this title or to invalidate any action of the Milk*  
 4863 *Commission previously taken including any regulation adopted by the Milk Commission.*

4864 *CHAPTER 34.*

4865 *CERTIFICATION OF AGRICULTURAL PRODUCTS.*

4866 § 3.2-3400. *Request of parties financially interested; fees to be deposited in Fund.*

4867 *A. In order to promote, protect, further, and develop the agricultural interests of the Commonwealth,*  
 4868 *the Commissioner may, when requested by parties financially interested in a lot of any agricultural*  
 4869 *products, investigate and certify the quality, condition, grade, or other classification of such agricultural*  
 4870 *product, pursuant to regulations adopted by the Board, including prescribing payment of fees as the*  
 4871 *Commissioner deems reasonable for the services provided by employees or licensed agents of the*  
 4872 *Department.*

4873 *B. There is hereby created in the state treasury a special nonreverting fund to be known as the*  
 4874 *Certification of Agricultural Products Trust Fund, hereafter referred to as "the Fund." The Fund shall*  
 4875 *be established on the books of the Comptroller. All moneys levied and collected pursuant to subsection*  
 4876 *A and § 3.2-4606 shall be paid into the state treasury and credited to the Fund. Interest earned on*  
 4877 *moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,*  
 4878 *including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall*  
 4879 *remain in the Fund. Moneys in the Fund shall be used solely to carry out the provisions of this chapter.*

4880 § 3.2-3401. *Licensing of agents.*

4881 *The Commissioner may license as inspectors persons not in the employ of the Department. No person*  
 4882 *who is not an employee of the Department may act as a licensed inspector under this chapter unless*  
 4883 *samples from commodities graded or inspected by him are regularly graded or inspected by an*  
 4884 *employee of the Department, or of the U.S. Department of Agriculture.*

4885 § 3.2-3402. *Certificates as evidence.*

4886 *Certificates of inspection and reinspection issued under this chapter by authorized agents of the*  
 4887 *Department and those relating to the grade, classification, quality, or condition of agricultural products*  
 4888 *issued under authority of the Congress of the United States shall be accepted in any court of the*  
 4889 *Commonwealth as prima facie evidence of the true grade, classification, condition, or quality of such*  
 4890 *agricultural product at the time of its inspection.*

4891 *CHAPTER 35.*

4892 *FARMERS MARKET SYSTEM.*

4893 § 3.2-3500. *Development of farmers market system.*

4894 *In overseeing the development of a farmers market system, the Board shall:*

4895 *1. Identify farmers market needs throughout the Commonwealth;*

4896 *2. Promote the orderly growth and development of farmers markets;*

4897 *3. Promote public awareness of farmers markets;*

4898 *4. Promote the coordination of Virginia's farmers market development with other segments of the*  
 4899 *Commonwealth's economy, such as tourism, horticultural production and marketing, fruit and vegetable*  
 4900 *production and marketing, retail trade, wholesale trade, intrastate marketing, interstate marketing, and*  
 4901 *new marketing ventures such as electronic marketing; and*

4902 *5. Advise the Governor on the development of the system of state-owned farmers market facilities.*

4903 § 3.2-3501. *Commissioner to manage farmers market operations.*

4904 *A. In order to establish, operate and maintain a system of state-owned farmers market facilities*  
 4905 *within the Commonwealth, the Commissioner may carry out the provisions of this chapter, including the*  
 4906 *power to:*

4907 *1. Cooperate with various state agencies and other organizations contributing to the development of*  
 4908 *the farmers market system;*

4909 *2. Develop and implement policy for the management of state-owned farmers market facilities,*  
 4910 *including:*

4911 *a. Guidelines for fees to be charged at the markets;*

4912 *b. Standards for evaluating market operations;*

4913 *c. Criteria for the expansion of existing state-owned farmers market facilities and the establishment*  
 4914 *of new markets in the future;*

4915 *d. Changes in management of markets; and*

4916 *e. Guidelines for the award of contracts for market management.*

4917 *3. Employ such personnel as necessary to operate the system of markets in accordance with the*



- 4918 Virginia Personnel Act (§ 2.2-2900 et seq.);
- 4919 4. Receive and dispense funds;
- 4920 5. Develop and manage a program budget for the farmers market system;
- 4921 6. Provide marketing and promotional services for the farmers market system;
- 4922 7. Develop detailed technical plans for, acquire or build, and manage the farmers market system;
- 4923 8. Conduct such studies as are necessary to ensure the success of the farmers market system;
- 4924 9. Make contracts and agreements and execute other instruments necessary for the operation of the
- 4925 farmers market system;
- 4926 10. Enter into agreements with and accept grants from any governmental agency in furtherance of
- 4927 this chapter;
- 4928 11. Enter into joint ventures with cities, towns, counties or combinations thereof in developing
- 4929 wholesale, shipping point, and retail farmers markets; and
- 4930 12. Rent or purchase land and facilities as deemed necessary to establish markets or to enhance
- 4931 farmers market development.
- 4932 B. If a market in the network is operated pursuant to a contract between the Commissioner and the
- 4933 market operator, such contract shall require that the operator annually submit to the Commissioner a
- 4934 plan for, and a report on, the operation of the market. The plan shall describe the operator's goals for
- 4935 the coming year as to the acreage to be served by the market, the types of crops to be sold at the
- 4936 market, and the number of brokers, buyers, and producers to utilize the market. The report shall
- 4937 describe the extent to which the goals for the previous year were met. The Commissioner shall submit
- 4938 an annual report on or before February 1 summarizing the market operators' reports and plans to the
- 4939 Chairmen of the House Committee on Agriculture, Chesapeake, and Natural Resources, the Senate
- 4940 Committee on Agriculture, Conservation and Natural Resources, the House Committee on
- 4941 Appropriations, and the Senate Committee on Finance.
- 4942 C. The Commissioner shall report annually to the Board regarding the receipt and expenditure of
- 4943 funds as well as the policies, programs, and activities of the market operators in the state-owned
- 4944 farmers market facilities.
- 4945 § 3.2-3502. Local retail farmers markets.
- 4946 Any locality may establish, operate and maintain a local retail farmers market. The local retail
- 4947 farmers market may request to be part of the network of farmers markets within the Commonwealth or
- 4948 may be independent of such network. Nothing in this section shall invalidate the actions of any locality
- 4949 taken prior to enactment of this section.
- 4950 CHAPTER 36.
- 4951 FERTILIZER.
- 4952 § 3.2-3600. Definitions.
- 4953 As used in this chapter, unless the context requires a different meaning:
- 4954 "Brand" means a term, design, trademark or product name under which a regulated product is
- 4955 distributed.
- 4956 "Bulk" means in nonpackaged form.
- 4957 "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.
- 4958 "Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than
- 4959 any specialty fertilizer use.
- 4960 "Compost" means a biologically stable material derived from the composting process.
- 4961 "Composting" means the biological decomposition of organic matter. It may be accomplished by
- 4962 mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic
- 4963 decay.
- 4964 "Contractor-applicator" means any person required to hold a permit to distribute or apply any
- 4965 regulated product pursuant to § 3.2-3608.
- 4966 "Custom medium" means a horticultural growing medium that is prepared to the exact specifications
- 4967 of the person who will be planting in the medium and delivered to that person without intermediate or
- 4968 further distribution.
- 4969 "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which
- 4970 may result from a lack of nutrient ingredients, or from lack of uniformity.
- 4971 "Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way
- 4972 alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter,
- 4973 warehouse or otherwise supply regulated product in the Commonwealth.
- 4974 "Distributor" means any person who distributes.
- 4975 "Fertilizer" means any substance containing one or more recognized plant nutrients, which is used
- 4976 for its plant nutrient content, and which is designed for use, or claimed to have value, in promoting
- 4977 plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime,
- 4978 limestone, and other products exempted by regulation.

- 4979 *"Fertilizer material" means a fertilizer that: (i) contains important quantities of no more than one of*  
4980 *the primary plant nutrients: nitrogen (N), phosphate (P205) and potash (K20); (ii) has 85 percent or*  
4981 *more of its plant nutrient content present in the form of a single chemical compound; or (iii) is derived*  
4982 *from a plant or animal residue, a by-product, or a natural material deposit that has been processed or*  
4983 *conditioned in such a way that its content of plant nutrients has not been materially changed, except by*  
4984 *purification and concentration.*
- 4985 *"Grade" means the percentage of total nitrogen (N), available phosphate (P205) and soluble potash*  
4986 *(K20), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis,*  
4987 *except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may*  
4988 *be guaranteed in fractional units.*
- 4989 *"Guaranteed analysis" means that information required by this chapter to be displayed on the label*  
4990 *of a regulated product.*
- 4991 *"Guarantor" means the person whose name appears on the label of a regulated product.*
- 4992 *"Horticultural growing medium" means any substance or mixture of substances that is promoted as*  
4993 *or is intended to function as an artificial soil for the managed growth of horticultural crops.*
- 4994 *"Industrial co-product" means a product derived from an industrial process that meets the definition*  
4995 *of fertilizer, soil amendment, soil conditioner or horticultural growing medium.*
- 4996 *"Investigational allowance" means an allowance for variations, inherent in the taking, preparation,*  
4997 *and analysis of an official sample.*
- 4998 *"Label" means the display of all written, printed, or graphic matter, upon the immediate container,*  
4999 *or a statement accompanying a regulated product, including an invoice.*
- 5000 *"Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated*  
5001 *product, including invoices, advertisements, brochures, posters, and television and radio announcements,*  
5002 *used in promoting the sale of the regulated product.*
- 5003 *"Licensee" means the person who receives a license to distribute any regulated product under the*  
5004 *provisions of this chapter.*
- 5005 *"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any*  
5006 *way alters the chemical or physical characteristics of any regulated product.*
- 5007 *"Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.*
- 5008 *"Official analysis" means the analysis of an official sample, made by the Commissioner.*
- 5009 *"Official sample" means the sample of regulated product taken by the Commissioner, and designated*  
5010 *as "official" by the Board.*
- 5011 *"Percent" or "percentage" means the percentage by weight.*
- 5012 *"Primary nutrient" includes total nitrogen (N), available phosphate (P205), and soluble potash*  
5013 *(K20).*
- 5014 *"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of*  
5015 *measurement of a commodity.*
- 5016 *"Registrant" means the person who registers regulated products, under the provisions of this chapter.*
- 5017 *"Regulated product" means any product governed by this chapter, including any fertilizer, specialty*  
5018 *fertilizer, soil amendment, soil conditioner, and horticultural growing medium.*
- 5019 *"Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared*  
5020 *or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or*  
5021 *stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or*  
5022 *producing any chemical or physical change in the soil. The following are exempt from the definition of*  
5023 *"soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil*  
5024 *conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed*  
5025 *peat.*
- 5026 *"Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared*  
5027 *or sold for soil corrective purposes including polyelectrolytes such as complex vinyl and acrylic*  
5028 *compounds and certain cellulose and lignin derivatives.*
- 5029 *"Specialty fertilizer" means a fertilizer distributed for nonfarm use, including use on home gardens,*  
5030 *lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.*
- 5031 *"Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling,*  
5032 *relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner, until the*  
5033 *Commissioner or the court gives written permission to sell, relocate, use or dispose of the lot of*  
5034 *regulated product or portion thereof.*
- 5035 *"Ton" means a unit of 2000 pounds avoirdupois weight.*
- 5036 *"Unmanipulated manure" means substances composed of the excreta of domestic animals, or*  
5037 *domestic fowls, that has not been processed or conditioned in any manner including processing or*  
5038 *conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any*  
5039 *material or materials (other than those that have been used for bedding, sanitary or feeding purposes*  
5040 *for such animals or fowls), or by any other means.*

- 5041 § 3.2-3601. Authority of the Board and the Commissioner to adopt regulations.
- 5042 A. The Board may adopt such regulations as are necessary to carry out the provisions of this
- 5043 chapter. Such regulations may include investigational allowances, definitions, records, and
- 5044 manufacturing practices, and the distribution and storage of regulated product prior to final sale.
- 5045 B. The Commissioner may adopt as a regulation:
- 5046 1. The Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food
- 5047 Control Officials;
- 5048 2. The methods of sampling and analysis for regulated products adopted by the Association of
- 5049 Official Analytical Chemists; and
- 5050 3. Any method of sampling and analysis for a regulated product developed by the Department or
- 5051 adopted by agencies of the federal government, agencies of other states, the Division of Consolidated
- 5052 Laboratories or other commercial laboratories accredited by the Food and Drug Administration, the
- 5053 U.S. Department of Agriculture or the Association of Official Analytical Chemists.
- 5054 C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of
- 5055 Regulations, who shall publish the regulation as a final regulation in the Virginia Register of
- 5056 Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and
- 5057 respond to petitions by any interested person at any time with respect to reconsideration or revision of
- 5058 such regulation. The Commissioner shall provide notice by first-class mail of regulations adopted by
- 5059 him pursuant to this section to all manufacturers of currently registered regulated product.
- 5060 D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise
- 5061 the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with
- 5062 the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia
- 5063 Register of Regulations.
- 5064 E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public
- 5065 participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or
- 5066 revision of any regulation adopted pursuant to subsections B, C, and D of this section.
- 5067 § 3.2-3602. Local government regulation of fertilizer.
- 5068 No locality shall regulate the registration, packaging, labeling, sale, or distribution of fertilizers. The
- 5069 provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide
- 5070 Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to
- 5071 § 36-98.
- 5072 § 3.2-3603. Publications.
- 5073 The Commissioner may publish in such forms and with such frequency as he may deem proper: (i)
- 5074 information concerning the distribution of fertilizers; and (ii) results of analysis based on official
- 5075 samples of fertilizer distributed within the Commonwealth, as compared with analysis guaranteed under
- 5076 §§ 3.2-3600 and 3.2-3611; and commercial value of nutrients as determined under § 3.2-3614.
- 5077 § 3.2-3604. Exchanges between manufacturers.
- 5078 Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of regulated
- 5079 product between importers, manufacturers, or manipulators who mix fertilizer materials for sale, or to
- 5080 prevent the free and unrestricted shipments of regulated product to manufacturers or manipulators who
- 5081 have registered their brands, and are licensed, as required by provisions of this chapter.
- 5082 § 3.2-3605. License, permit and registration year.
- 5083 The license year for all distributors and manufacturers, permit year for all contractor-applicators,
- 5084 registration year for any regulated product, and tonnage reporting year is July 1 through June 30 of the
- 5085 following year. Each license, permit or registration shall be issued to expire on June 30 of the year for
- 5086 which it is issued, provided that any license, permit or registration shall be valid through July 31 of the
- 5087 next ensuing license, permit or registration year or until the issuance of the renewal license, permit or
- 5088 registration, whichever event occurs first, if the holder has filed a renewal application with the
- 5089 Commissioner on or before June 30 of the year for which the current license, permit, or registration
- 5090 was issued.
- 5091 § 3.2-3606. Manufacturer and distributor required to obtain license; fee.
- 5092 A. It is unlawful for any person whose name appears upon the label of any regulated product as
- 5093 manufacturer or distributor to distribute a regulated product without first obtaining a license to
- 5094 distribute the regulated product in the Commonwealth. The person who distributes the regulated product
- 5095 shall file an application with the Commissioner on a form furnished or approved by the Commissioner,
- 5096 and pay to the Commissioner a license fee of \$50.
- 5097 B. Any person who distributes a regulated product shall obtain a license prior to distributing any
- 5098 regulated product for each manufacturing location that he operates and that distributes any regulated
- 5099 product within the Commonwealth. The person who distributes a regulated product shall apply for a
- 5100 license on a form furnished or approved by the Commissioner, and pay to the Commissioner a license
- 5101 fee of \$50 for each manufacturing location that distributes in the Commonwealth.

- 5102 C. The license application shall include the name and address of the applicant and the name and  
5103 address of the applicant's distribution points in the Commonwealth.
- 5104 D. The licensee shall place the name and address shown on the license on:
- 5105 1. The labels of any regulated product, and pertinent invoices thereof, distributed by the licensee in  
5106 the Commonwealth; and
- 5107 2. All storage facilities for any regulated product distributed by the licensee in the Commonwealth.
- 5108 E. The licensee shall inform the Commissioner in writing of additional distribution points established  
5109 during the period of the license.
- 5110 § 3.2-3607. Product registration and label requirements; exemptions.
- 5111 A. In addition to licensing requirements:
- 5112 1. Any person whose name is on the label of and who distributes in the Commonwealth any specialty  
5113 fertilizer packaged in containers of 50 pounds or less dry net weight, or five gallons or less liquid net  
5114 volume, shall: (i) apply for registration for such specialty fertilizer with the Commissioner on forms  
5115 furnished or approved by the Commissioner; (ii) pay to the Commissioner by July 1 of each registration  
5116 year a registration fee of \$50 for each grade under a given brand prior to distributing the fertilizer in  
5117 the Commonwealth; and (iii) provide labels for each grade under a given brand with the application.
- 5118 2. Any person who distributes in the Commonwealth a soil amendment, soil conditioner, or  
5119 horticultural growing medium shall: (i) apply for registration for such soil amendment, soil conditioner,  
5120 or horticultural growing medium with the Commissioner on forms furnished or approved by the  
5121 Commissioner; (ii) pay to the Commissioner by July 1 of each registration year a registration fee of  
5122 \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing  
5123 medium prior to distributing the product in the Commonwealth; and (iii) provide labels for each product  
5124 name or brand with the application.
- 5125 B. The Commissioner shall furnish a copy of the registration to the applicant after approval of the  
5126 registration.
- 5127 C. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or  
5128 horticultural growing medium shall include with the application a label that includes the following  
5129 information:
- 5130 1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or  
5131 horticultural growing media, the product name or brand;
- 5132 2. The guaranteed analysis;
- 5133 3. The name and address of the registrant; and
- 5134 4. The quantity statement.
- 5135 D. The Commissioner may require verification of any labeling claims for any regulated product.
- 5136 E. Custom-media and horticultural growing media planted with live plant material are exempt from  
5137 labeling and registration requirements and inspection fees.
- 5138 F. The Commissioner shall give the guarantor or manufacturer of any unregistered regulated product  
5139 in commerce in the Commonwealth, a grace period of 15 working days from issuance of notification  
5140 within which to register the regulated product. Any person required to register any regulated product  
5141 who fails to register the regulated product within the grace period shall pay to the Commissioner a \$50  
5142 late fee in addition to the registration fee. The Commissioner may issue a stop sale, use, removal or  
5143 seizure order upon any regulated product until the registration is issued.
- 5144 § 3.2-3608. Contractor-applicator permit.
- 5145 A. It is unlawful for any person, other than a licensee or an agent of a licensee, to distribute or  
5146 apply any regulated product for profit without obtaining a permit. In order to obtain a permit the  
5147 person shall complete an application form furnished by the Commissioner and pay the \$50 annual  
5148 permit fee required to be a contractor-applicator. An employee or agent of a contractor-applicator who  
5149 holds a valid permit is not required to obtain a permit or pay a fee.
- 5150 B. Any person who engages in business as a contractor-applicator for a period of at least 30 days,  
5151 and who has failed to obtain a license or permit during that period, shall pay a \$50 late fee to the  
5152 Commissioner, in addition to the license or permit fee.
- 5153 C. The contractor-applicator shall guarantee the consumer that the contractor-applicator shall  
5154 comply with all provisions of this chapter, which shall include an assurance of the delivery of the grade  
5155 of fertilizer as described on the consumer's invoice.
- 5156 § 3.2-3609. Reporting year; inspection fees; distribution to nonlicensees.
- 5157 A. The reporting year for regulated products shall be July 1 through June 30 of the following year.
- 5158 B. Any person who distributes any regulated product to a non-licensed person:
- 5159 1. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the  
5160 inspection fee by August 1; or
- 5161 2. Shall not be required to file the tonnage statement or pay the inspection fee, if: (i) another person  
5162 agrees in a written statement, filed with the Commissioner, to file the tonnage statement and to pay to  
5163 the Commissioner the inspection fee by August 1; and (ii) he files with the Commissioner by August 1

5164 on a form furnished or approved by the Commissioner a purchasing report stating the number of tons of  
5165 regulated product purchased by the person during the reporting year and from whom the regulated  
5166 product was purchased.

5167 C. Any person who distributes fertilizer in Virginia to a nonlicensee as provided for in subsection B  
5168 shall pay to the Commissioner an inspection fee of 25 cents (\$0.25) per ton of fertilizer, including  
5169 specialty fertilizer, or \$35, whichever is greater, per tonnage reporting year.

5170 D. Any person who distributes in Virginia any soil amendments, soil conditioners, or horticultural  
5171 growing media to a nonlicensee as provided for in subsection B shall pay to the Commissioner an  
5172 inspection fee of 25 cents (\$0.25) per ton of soil amendment, soil conditioner or horticultural growing  
5173 medium or \$35, whichever is greater, per tonnage reporting year.

5174 E. The person subject to subsection B shall pay to the Commissioner a late fee, amounting to 10  
5175 percent of the inspection fee due, or \$50, whichever is greater, in addition to the amount of the  
5176 inspection fee due, if the tonnage statement is not filed, is misstated, or if the payment of inspection fees  
5177 is not made within 15 working days of the specified filing date.

5178 § 3.2-3610. Statistical reports.

5179 A. For commercial fertilizer:

5180 1. Any person distributing or selling commercial fertilizer to a nonlicensee shall furnish the  
5181 Commissioner a monthly report showing:

5182 a. The county or city of the nonlicensee consignee;

5183 b. The amounts (expressed in tons, or decimal portions ) of each grade of fertilizer; and

5184 c. The form in which the person distributed the fertilizer (e.g., in bags, bulk, or in liquid form).

5185 2. This information shall be submitted in the following form and shall specify shipments made during  
5186 the preceding month:

5187 a. A summary report on a form prescribed by the Commissioner, on or before the 20th day of each  
5188 month; or

5189 b. A summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting  
5190 System. Prior to using the electronic transfer method, the person responsible for submitting the monthly  
5191 tonnage report shall make arrangements with the Commissioner for the Commissioner's receipt of the  
5192 report by such method.

5193 3. If the monthly report is not filed by the due date, a late fee of \$35 shall be assessed against the  
5194 licensee.

5195 B. For all other regulated products:

5196 1. The person distributing or selling such products to a nonlicensee shall furnish the Commissioner  
5197 an annual report showing:

5198 a. The county or city of the nonlicensee consignee; and

5199 b. The amounts (expressed in tons, or decimal portions ) of each grade under a given brand of  
5200 product.

5201 2. Any person listed in subdivision B 1 who fails to file this report by August 1 shall pay a late fee  
5202 of \$35 to the Commissioner.

5203 § 3.2-3611. Labeling.

5204 A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall  
5205 affix a label to the container or provide an invoice at the time of delivery for a bulk regulated product  
5206 that states in clear, legible and conspicuous form, in the English language, the following information:

5207 1. The quantity statement;

5208 2. The grade under a given brand. The grade shall not be required when no primary nutrients are  
5209 claimed;

5210 3. The guaranteed analysis, which shall:

5211 a. For fertilizers, conform to the following, with the percentage of each plant nutrient stated as  
5212 follows:

5213 (1) Total Nitrogen (N) ..... %

5214 Available Phosphate (P205) ..... %

5215 Soluble Potash (K20) ..... %

5216 (2) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic  
5217 phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be  
5218 guaranteed;

5219 (3) Guarantees for plant nutrients other than nitrogen (N), phosphate (P205), and potash (K20) shall  
5220 be expressed in the form of the element. A statement of the sources of nutrients including oxides, salt,  
5221 and chelates, may be required on the application for registration of specialty fertilizers, and may be  
5222 included as a parenthetical statement on the label. Degree of acidity or alkalinity (pH), beneficial  
5223 substances, or compounds determinable by laboratory methods also may be guaranteed by permission of  
5224 the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any

5225 degree of acidity or alkalinity (pH), beneficial substances, or compounds are guaranteed, they shall be  
 5226 subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;  
 5227 b. For soil amendments, consist of a list of ingredients, and may include a statement of naturally  
 5228 occurring nutrient levels;  
 5229 c. For soil conditioners, including polyelectrolytes, contain the following information in the following  
 5230 form:  
 5231 (1) Name of active ingredient ..... %  
 5232 (name and list all)  
 5233 (2) Total other ingredients ..... %  
 5234 d. For horticultural growing media, include a list of ingredients and other guarantees as required by  
 5235 regulation;  
 5236 e. When compost derived from sewage sludge, hazardous materials, unrendered animals or poultry  
 5237 or their parts, or other source material specified in regulations established by the Board is used as an  
 5238 ingredient, identify the source material of the compost; and  
 5239 f. Include a list of such other ingredients as may be required by the Board through regulation.  
 5240 4. The name and address of the registrant or licensee.  
 5241 B. A commercial fertilizer that is formulated according to specifications provided by a consumer  
 5242 prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show: (i) the quantity  
 5243 statement; (ii) the guaranteed analysis; and (iii) the name and address of the distributor or the licensee.  
 5244 C. For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the  
 5245 registration document and customer sales invoice.  
 5246 § 3.2-3612. Misbranding.  
 5247 A. It is unlawful to distribute misbranded regulated product. A regulated product shall be deemed to  
 5248 be misbranded if:  
 5249 1. It has a label that is false or misleading in any particular;  
 5250 2. It is distributed under the name of another product;  
 5251 3. It is not labeled as specified in § 3.2-3611, and in accordance with regulations adopted pursuant  
 5252 to this chapter; or  
 5253 4. It purports to be, or is represented as, a fertilizer, or is represented as containing a plant nutrient  
 5254 or fertilizer, unless such plant nutrient or fertilizer conforms to the definition of identity, if any, as  
 5255 prescribed by regulation of the Board.  
 5256 B. The person whose name is on the label of any regulated product found to be misbranded shall  
 5257 pay to the consumer an assessment equal to 10 percent of the retail value of the regulated product  
 5258 found to be in violation of subsection A of this section. The assessment for misbranding shall apply only  
 5259 to the retail sale of any regulated product made from a lot or a portion thereof after the Commissioner  
 5260 has sampled the lot or a portion thereof.  
 5261 § 3.2-3613. Adulteration.  
 5262 A. It is unlawful to distribute an adulterated regulated product. A regulated product shall be deemed  
 5263 to be adulterated if:  
 5264 1. It contains any deleterious or harmful ingredient, in sufficient amount to render it injurious to  
 5265 beneficial plant life, when applied in accordance with directions for use on the label;  
 5266 2. It does not contain an adequate warning statement, or directions for use, on the label sufficient to  
 5267 protect plant life;  
 5268 3. It has a composition that falls below or differs from that which it is purported to possess by its  
 5269 labeling; or  
 5270 4. It contains unwanted crop seed, or viable prohibited or restricted noxious weed seeds in amounts  
 5271 exceeding the limits specified in the regulations of the Board.  
 5272 B. The person whose name is on the label of any regulated product found to be adulterated shall pay  
 5273 to the consumer an assessment equal to 10 percent of the retail value of the regulated product found to  
 5274 be in violation of subsection A not to exceed \$5,000 per occurrence. The assessment for adulteration  
 5275 shall apply only to the retail sale of any regulated product made from a lot or a portion thereof after  
 5276 the Commissioner has sampled the lot or a portion thereof.  
 5277 § 3.2-3614. Commercial value.  
 5278 For the purpose of determining the commercial value to be applied in making assessments for  
 5279 variance from guarantee, the Commissioner shall determine the values per unit of total nitrogen (N),  
 5280 available phosphate (P205), soluble potash (K20), and micronutrients in fertilizers in the  
 5281 Commonwealth.  
 5282 § 3.2-3615. Plant food deficiency.  
 5283 A. The Commissioner shall calculate assessments for a deficiency of: (i) total nitrogen (N); (ii)  
 5284 available phosphate (P205); or (iii) soluble potash (K20). If the analysis shows that the fertilizer is  
 5285 deficient: (a) in one or more of the guaranteed primary plant nutrients, beyond the investigational  
 5286 allowances and compensations, as established by regulation; or (b) that the overall index value of the

5287 fertilizer is below the level established by regulation, then an assessment for variance from guarantee of  
 5288 two times the value of such deficiency, not to exceed \$5,000 per occurrence, shall be paid to the  
 5289 consumer by the guarantor. When the fertilizer is subject to an assessment under both clauses (a) and  
 5290 (b), the Commissioner shall calculate assessments under both such clauses and the guarantor shall pay  
 5291 to the consumer the larger of the two assessments.

5292 B. If, upon evidence satisfactory to the Commissioner, a person is found to have: (i) altered the  
 5293 content of any fertilizer shipped to him by a registrant or licensee; or (ii) mixed, or commingled,  
 5294 fertilizer from two or more suppliers, such that the result of either alteration changes the analysis of the  
 5295 fertilizer as originally guaranteed, then the person who has altered, mixed or commingled shall: (a)  
 5296 obtain a registration or a license; (b) be held liable for all assessments; and (c) be subject to other  
 5297 provisions of this chapter including seizure, condemnation, and stop sale.

5298 C. A deficiency in an official sample of mixed fertilizer, resulting from nonuniformity, is not  
 5299 distinguishable from a deficiency due to actual plant nutrient shortage, and any deficiency due to  
 5300 nonuniformity shall be subject to the provisions of this chapter.

5301 § 3.2-3616. Assessments for variance from label guarantees.

5302 A. The guarantor shall pay to the consumer all assessments for misbranding, adulteration or plant  
 5303 food deficiency on the lot of regulated product represented by the sample analyzed. The guarantor shall  
 5304 make payment to the consumer within 60 days after the date of notice from the Commissioner to the  
 5305 guarantor. The guarantor shall obtain a receipt documenting the payment of such assessment, which  
 5306 shall be forwarded to the Commissioner within the 60-day period during which payment to the  
 5307 consumer is made.

5308 B. If the guarantor cannot locate the consumer within 60 days; the amount of the assessment shall  
 5309 be paid to the Commissioner, who shall deposit it in the state treasury, and report to the State  
 5310 Comptroller, who shall credit the amount to a special fund for the sale of substandard fertilizer. The  
 5311 Commissioner shall pay to the consumer of a lot of regulated product on which the assessment was  
 5312 made an amount equal to the assessment from the Sale of Substandard Fertilizer Fund if the consumer  
 5313 can be located in 90 days. The State Comptroller shall transfer any balance remaining in the fund for a  
 5314 period of 90 days to the Feed, Lime, Fertilizer, and Animal Remedies Fund as specified by § 3.2-3617.  
 5315 Any person required to pay an assessment who fails to pay the assessment within the time specified  
 5316 shall pay to the Commissioner a late fee of 10 percent of the assessment, or \$50, whichever is greater,  
 5317 in addition to the assessment. The Commissioner may cancel the license of such person who fails to pay  
 5318 the assessment.

5319 § 3.2-3617. Fund established; disposition of fees, assessments, and penalties.

5320 A. There is hereby created in the state treasury a special nonreverting fund to be known as the Feed,  
 5321 Lime, Fertilizer, and Animal Remedies Fund, hereafter referred to as "the Fund." The Fund shall be  
 5322 established on the books of the Comptroller. Except as otherwise specified, moneys levied and collected  
 5323 pursuant to this chapter and pursuant to Chapters 37, 48, and 49 shall be paid into the state treasury  
 5324 and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be  
 5325 credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal  
 5326 year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be  
 5327 used solely for the purposes set forth in this chapter.

5328 B. All fees, assessments and penalties, including funds transferred from the Fund for the Sale of  
 5329 Substandard Fertilizer pursuant to § 3.2-3616, received by the Commissioner under this chapter shall be  
 5330 paid into the Feed, Lime, Fertilizer, and Animal Remedies Fund, to the credit of the Department, to be  
 5331 used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and  
 5332 other expenses; except that the Commissioner shall deposit, to the credit of the Virginia Agricultural  
 5333 Foundation Fund established pursuant to § 3.2-2905, five cents (\$0.05) of the inspection fee per ton of  
 5334 regulated product.

5335 § 3.2-3618. Inspection, sampling and analysis; penalty.

5336 A. The Commissioner shall: (i) sample, inspect, analyze, and test any regulated product distributed  
 5337 within the Commonwealth; (ii) inspect storage facilities where such regulated product is stored; (iii)  
 5338 monitor and, where the Commissioner deems it necessary, regulate the manufacturing procedures of  
 5339 such regulated products as affected by best management practices for manufacturing containment and  
 5340 considerations of environmental factors; and (iv) allocate adequate personnel to the major farm  
 5341 fertilizer consuming areas of the state to carry out his duties under this chapter as such duties relate to  
 5342 insuring the quality, analysis, and quantity of fertilizer sold and distributed in the state.

5343 The Commissioner is authorized to enter during operating hours the premises or carriers of any  
 5344 person subject to regulation under this chapter, in order to have access to: (i) the regulated product,  
 5345 storage facilities and manufacturing practices; and (ii) records relating to the distribution and storage  
 5346 of regulated product.

5347 B. Any person who shall hinder or obstruct in any way the Commissioner in the performance of his

5348 official duties is guilty of a Class 3 misdemeanor.

5349 C. The Commissioner shall use the methods of sampling and analysis adopted by the Commissioner  
5350 or the Board.

5351 D. The Commissioner, in determining for administrative purposes whether any fertilizer is deficient  
5352 in plant food, shall be guided solely by the official sample. The Commissioner shall obtain and analyze  
5353 samples as specified in subsection C of this section.

5354 E. The Commissioner may distribute information regarding official analysis of fertilizers. The  
5355 Commissioner shall retain official samples establishing an assessment for variance from guarantee for a  
5356 minimum of 90 days from issuance of a deficiency report.

5357 § 3.2-3619. Stop sale, use, removal, or seizure orders.

5358 The Commissioner may issue and enforce a written or printed stop sale, use, removal, or seizure  
5359 order to the owner or custodian of any lot of regulated product distributed in violation of this chapter.  
5360 The Commissioner shall release for distribution the regulated product held under a stop sale, use,  
5361 removal, or seizure order when the requirements of this chapter have been met. If the Commissioner  
5362 determines that the regulated product cannot be brought into compliance with the chapter, the  
5363 Commissioner shall release the regulated product to be remanufactured, returned to the manufacturer,  
5364 or destroyed.

5365 § 3.2-3620. Seizure and condemnation.

5366 In addition to the provisions of § 3.2-3623, the Commissioner may seize any lot of regulated product  
5367 not in compliance with this chapter. The Commissioner may make application for seizure to an  
5368 appropriate court in the city or county where such regulated product is located. In the event that the  
5369 court finds such regulated product to be in violation of this chapter, and orders the condemnation of  
5370 such regulated product, the owner of the regulated product shall dispose of the seized regulated product  
5371 in any manner that, in the opinion of the Commissioner, is consistent with the quality of the regulated  
5372 product, and that complies with the laws of the Commonwealth. In no instance shall the court order the  
5373 disposition of such regulated product without first giving the claimant an opportunity to apply to the  
5374 court for release of the regulated product, or for permission to process or relabel the regulated product,  
5375 to bring it into compliance with this chapter.

5376 § 3.2-3621. Cancellation of registration, permit, or license.

5377 A. The Commissioner may: (i) cancel the registration, license or contractor-applicator permit of any  
5378 person; (ii) cancel the registration of any brand of regulated product; or (iii) refuse to register any  
5379 brand of regulated product, or issue any license. The Commissioner shall cancel or refuse a license or  
5380 registration upon satisfactory evidence that the registrant or licensee, has used fraudulent or deceptive  
5381 practices in the evasion, or attempted evasion, of this chapter or any regulations adopted hereunder.

5382 B. In addition, the Commissioner may cancel the license, permit or registration of any person who  
5383 willfully fails to comply with this chapter by:

5384 1. Failing to file the tonnage report;

5385 2. Falsifying information;

5386 3. Making an inaccurate statement of tonnage distributed in the Commonwealth during any reporting  
5387 year;

5388 4. Making an inaccurate listing of regulated products for registration;

5389 5. Failing to pay the license, permit, registration or inspection fee;

5390 6. Failing to accurately report any of the information required to be submitted under this chapter;

5391 7. Failing to keep records for a period of three years; or

5392 8. Failing to allow inspection of records by the Commissioner.

5393 § 3.2-3622. Commissioner's actions; injunction.

5394 A. Nothing in this chapter shall require the Commissioner to report for prosecution, or institute  
5395 seizure proceedings, where the Commissioner considers the violations of the chapter to be minor. In  
5396 such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that  
5397 the public interest will be best served by so doing.

5398 B. The Commissioner may apply for, and the court to grant, a temporary or permanent injunction  
5399 restraining any person from violating, or continuing to violate, this chapter or any regulation adopted  
5400 under this chapter, notwithstanding the existence of other remedies at law.

5401 § 3.2-3623. Violations.

5402 A. The Commissioner shall give notice of the violation to the registrant or the licensee responsible  
5403 for the regulated product, and may give notice to the distributor from whom the Commissioner sampled  
5404 the regulated product.

5405 B. Any person convicted of violating any of the provisions of this chapter or the regulations adopted  
5406 hereunder is guilty of a Class 3 misdemeanor.

5407 CHAPTER 37.

5408 AGRICULTURE LIMING MATERIALS.

5409 § 3.2-3700. Definitions.



- 5410 As used in this chapter, unless the context requires a different meaning:
- 5411 "Agricultural liming material" means any limestone with calcium and magnesium compounds that
- 5412 has the capacity, and whose intended purpose is, to neutralize soil acidity.
- 5413 "Applicant" means the person who applies for, or requests, a license, or applies for registration of
- 5414 any liming material; or applies to become a contractor.
- 5415 "Brand" means the term, designation, trademark, product name or other specific designation under
- 5416 which any liming material is offered for sale.
- 5417 "Bulk" means materials in nonpackaged form.
- 5418 "Calcium carbonate equivalent" means the acid neutralizing capacity of any liming material,
- 5419 expressed as weight percentage of calcium carbonate.
- 5420 "Contractor" means any person required to hold a permit to sell any bulk liming material to the
- 5421 consumer pursuant to § 3.2-3704.
- 5422 "Distributor" means any person who imports or consigns, manufactures, produces, compounds,
- 5423 mixes, or blends any liming material, or who offers for sale, sells, barter or otherwise supplies any
- 5424 liming material.
- 5425 "Effective Neutralizing Value" or "ENV" means a relative value using the calcium oxide content,
- 5426 magnesium oxide content and fineness to express the effectiveness of an agricultural liming material in
- 5427 neutralizing soil acidity. This term is synonymous with Effective Neutralizing Power (ENP).
- 5428 "Fineness" means the percentage by weight of the material that will pass through United States
- 5429 Standards sieves of specified sizes.
- 5430 "Industrial co-product used to neutralize soil acid" means a waste or by-product of an industrial
- 5431 process that contains any compound not normally found in limestone that has the capacity, and whose
- 5432 intended purpose is, to neutralize soil acidity.
- 5433 "Kind" means one of the two classes of liming material.
- 5434 "Label" means any written or printed matter on, or attached to, the package, or on the delivery
- 5435 ticket that accompanies bulk shipments, of any liming material.
- 5436 "Licensed" or "licensee" means the person issued a license to distribute any liming material in the
- 5437 Commonwealth.
- 5438 "Limestone" means a material consisting essentially of calcium carbonate, or a combination of
- 5439 calcium carbonate and magnesium carbonate, capable of neutralizing soil acidity.
- 5440 "Liming material" means any agricultural liming material and any industrial co-product used to
- 5441 neutralize soil acid.
- 5442 "Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, imports
- 5443 or consigns liming material, or who offers for sale, sells, barter or otherwise supplies liming material.
- 5444 "Percent" or "percentage" means by weight.
- 5445 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of
- 5446 measurement of a commodity.
- 5447 "Registrant" means the person registering any liming material pursuant to the provisions of this
- 5448 chapter.
- 5449 "Standard liming ton" means a ton of agricultural liming material with a calcium carbonate
- 5450 equivalent of 90 percent.
- 5451 "Stop sale, use, removal or seizure order" means an order that prohibits the distributor from selling,
- 5452 relocating, using, or disposing of a lot of liming material, or portion thereof, in any manner, until the
- 5453 Commissioner or a court gives written permission to sell, relocate, use or dispose of the lot of liming
- 5454 material or portion thereof.
- 5455 "Ton" means a unit of 2,000 pounds avoirdupois weight.
- 5456 "Type" means the identification of the agricultural liming material as follows:
- 5457 1. "Burnt" means any agricultural liming material with calcium and magnesium compounds capable
- 5458 of neutralizing soil acidity, and that consists essentially of calcium oxide, or a combination of calcium
- 5459 oxide and magnesium oxide.
- 5460 2. "Calclitic" means any agricultural liming material in which 85 percent or more of the total
- 5461 neutralizing value, expressed as calcium carbonate equivalent, is derived from calcium.
- 5462 3. "Dolomitic" means any agricultural liming material in which 15 percent or more of the total
- 5463 carbonate content is magnesium carbonate.
- 5464 4. "Hydrated" means any agricultural liming material, made from burnt lime, that consists essentially
- 5465 of: (i) calcium hydroxide; (ii) a combination of calcium hydroxide, magnesium oxide and magnesium
- 5466 hydroxide; or (iii) a combination of calcium hydroxide, and either magnesium oxide or magnesium
- 5467 hydroxide.
- 5468 5. "Marl" means a granular or loosely consolidated earthy agricultural liming material composed
- 5469 largely of calcium carbonate.
- 5470 § 3.2-3701. Authority of Board and Commissioner to adopt regulations.

5471 A. The Board may adopt such regulations as are necessary to carry out the provisions of this  
5472 chapter. Such regulations may include to investigational allowances, definitions, records, manufacturing  
5473 practices and the distribution and storage of liming material.

5474 B. The Commissioner may adopt, as a regulation:

5475 1. The Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food  
5476 Control Officials;

5477 2. The methods of sampling and analysis for liming material adopted by the Association of Official  
5478 Analytical Chemists; and

5479 3. Any method of sampling and analysis for liming material developed by the Department or adopted  
5480 by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratory  
5481 Services, or other commercial laboratories accredited by the Food and Drug Administration, U.S.  
5482 Department of Agriculture or Association of Official Analytical Chemists.

5483 C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of  
5484 Regulations, who shall publish the regulation as a final regulation in the Virginia Register of  
5485 Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and  
5486 respond to petitions by any interested person at any time with respect to reconsideration or revision of  
5487 such regulation.

5488 D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise  
5489 the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with  
5490 the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia  
5491 Register of Regulations.

5492 E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public  
5493 participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration or  
5494 revision of any regulation adopted pursuant to subsections B, C, and D.

5495 § 3.2-3702. Registration; permitting of distributors.

5496 A. Any distributor of agricultural liming material in the Commonwealth shall register each brand by  
5497 July 1 for the registration year July 1 through June 30, before distributing any agricultural liming  
5498 material in the Commonwealth. Each distributor shall submit an application for registration to the  
5499 Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner  
5500 a registration fee of \$50 per brand of agricultural liming material per registration year. Upon approval  
5501 by the Commissioner, the Commissioner shall furnish a copy of the registration to the applicant. Each  
5502 registration shall expire on June 30 of the registration year for which the Commissioner issued the  
5503 registration. Any registration shall be valid through July 31 of the next registration year or until  
5504 issuance of the renewal registration, whichever occurs first, if the holder of the registration has filed a  
5505 renewal application with the Commissioner on or before June 30 of the registration year for which the  
5506 Commissioner issued the registration.

5507 B. Any distributor of any brand of industrial co-product used to neutralize soil acid in the  
5508 Commonwealth shall register each brand by July 1 of each year for the registration year of July 1 to  
5509 June 30, before distributing any industrial co-product used to neutralize soil acid in the Commonwealth.  
5510 Each distributor shall submit an application for registration to the Commissioner on forms furnished or  
5511 approved by the Commissioner and shall pay to the Commissioner a registration fee of \$100 per brand  
5512 of industrial co-product used to neutralize soil acid per registration year. The Commissioner shall  
5513 furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the  
5514 registration year for which the Commissioner issued the registration. Every such registration shall be  
5515 valid through July 31 of the next registration year or until issuance of the renewal registration,  
5516 whichever occurs first, if the holder of the registration has filed a renewal application with the  
5517 Commissioner on or before June 30 of the registration year for which the Commissioner issued the  
5518 registration.

5519 Any distributor making application to register any brand of industrial co-product used to neutralize  
5520 soil acid shall submit to the Commissioner test data indicating the product's neutralizing value, and its  
5521 safety to plants and animals.

5522 C. If the Commissioner identifies any unregistered liming material in commerce in the  
5523 Commonwealth during the registration year, the Commissioner shall grant a grace period of 15 working  
5524 days from issuance of notification to the distributor of the liming material to register the liming material  
5525 without penalty. Any distributor who fails to register each brand of liming material being distributed by  
5526 him in the Commonwealth by the 15th day of the grace period, shall pay to the Commissioner a \$50  
5527 late fee per brand of liming material in addition to the registration fee, as well as cause a stop sale,  
5528 use, removal or seizure order to be issued upon said liming material until its registration is complete.

5529 D. A distributor shall not be required to register any brand of liming material or liming material  
5530 with added potash, if it has been duly registered under this chapter by another person, provided the  
5531 label on the liming material the other person registered does not differ in any respect from the label on  
5532 the liming material the distributor seeks to register.

5533 § 3.2-3703. *Manufacturer required to obtain license; fee.*

5534 A. Any person who manufactures or whose name appears on the label of any liming material to be  
5535 distributed in the Commonwealth shall by July 1 of each year, or prior to distribution of such liming  
5536 material, obtain a license for the licensing year of July 1 to June 30. Each person shall make  
5537 application on forms furnished or approved by the Commissioner and shall pay a license fee of \$50 per  
5538 licensing year per distributor. Each license shall expire on June 30 of the license year for which the  
5539 Commissioner issued the license. Every such license shall be valid through July 31 of the next licensing  
5540 year or until issuance of the renewal license, whichever occurs first, if the holder of the license filed a  
5541 renewal application with the Commissioner on or before June 30 of the licensing year for which the  
5542 Commissioner issued the license.

5543 B. The Commissioner shall grant to any person who has failed to obtain a license required by  
5544 subsection A, a grace period of 15 working days from issuance of notification to obtain a license  
5545 without a penalty. Any person who fails to obtain a license by the 15th day of the grace period shall  
5546 pay to the Commissioner a \$50 late fee in addition to the license fee, as well as cause a stop sale, use,  
5547 removal or seizure order to be issued on any liming material the person distributes until the person  
5548 obtains the required license.

5549 § 3.2-3704. *Contractor permit.*

5550 A. It is unlawful for any person, other than a registrant or licensee, to sell bulk liming material  
5551 unless the person: (i) obtains a license by completing a contractor application form furnished or  
5552 approved by the Commissioner and pays the \$50 annual fee required to be a contractor; (ii) is an  
5553 employee or agent of a contractor who holds a valid permit, in which case no permit is required and no  
5554 fee is due from the employee or agent; or (iii) holds a valid permit to be a contractor-applicator  
5555 pursuant to subsection A of § 3.2-3608, or is an employee or agent of person holding a valid permit to  
5556 be a contractor-applicator pursuant to subsection A of § 3.2-3608, in which case no additional permit is  
5557 required and no additional fee is due. Each permit to do business as a contractor shall expire on June  
5558 30 of the permitting year for which the Commissioner issued the permit. Every such permit shall be  
5559 valid through July 31 of the next permitting year or until issuance of the renewal permit, whichever  
5560 occurs first, if the holder of the permit has filed a renewal application with the Commissioner on or  
5561 before June 30 of the permitting year for which the Commissioner issued the permit.

5562 B. The Commissioner shall grant to a contractor who has failed to obtain a contractor's permit to do  
5563 business during the permitting year a grace period of 15 working days, starting upon issuance of  
5564 notification, to obtain the permit without the payment of a late fee. If the contractor fails to obtain a  
5565 permit by the 15th day of the grace period, the contractor shall pay to the Commissioner a \$50 late fee  
5566 in addition to the permit fee, and the Commissioner shall cause a stop sale, use, removal or seizure  
5567 order to be issued on any liming material the contractor sells until the contractor obtains the required  
5568 permit.

5569 C. The contractor shall guarantee the consumer that the contractor shall comply with all provisions  
5570 of this chapter that apply to the sale and delivery of bulk liming material.

5571 § 3.2-3705. *Distribution to nonlicensed person; report of tonnage; inspection fee; fee for late  
5572 payment.*

5573 A. By August 1 of each year, each person who distributes liming material to a nonlicensed person  
5574 shall submit on a form furnished or approved by the Commissioner a tonnage statement for the  
5575 reporting year July 1 through June 30 of each year documenting the number of tons of each liming  
5576 material sold by the distributor for use in each county or city in the Commonwealth. Each person  
5577 distributing liming material in the Commonwealth to a nonlicensed person shall file a statement with the  
5578 Commissioner and shall pay to the Commissioner an inspection fee of five cents (\$.05) per ton of  
5579 liming material sold per reporting year. The minimum inspection fee shall be \$35 per distributor per  
5580 reporting year. If the distributor fails to submit the tonnage statement and pay the inspection fee by  
5581 August 1 of each year, the Commissioner shall notify the distributor and grant a grace period of 15  
5582 working days from issuance of notification for the distributor to submit the tonnage statement and to  
5583 pay the inspection fee without penalty. If the distributor fails to submit the tonnage statement and pay  
5584 the inspection fee by the time the 15th day of the grace period has expired, the distributor shall pay to  
5585 the Commissioner a late fee of 10 percent of the inspection fee, or \$50, whichever is greater, per  
5586 reporting year in addition to the inspection fee due.

5587 B. Any distributor required to pay an inspection fee under subsection A shall use generally accepted  
5588 accounting principles that indicate in the distributor's records the tonnage of liming materials sold by  
5589 the distributor in the Commonwealth. The Commissioner may inspect the distributor's records that the  
5590 distributor shall maintain for a period of three years.

5591 C. Any person who distributes liming materials to a nonlicensed person:

5592 1. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the  
5593 inspection fee; or

5594 2. Shall not be required to file the tonnage statement or pay the inspection fee, if: (i) another person  
 5595 agrees in a written statement, filed with the Commissioner, to pay the inspection fee and file the tonnage  
 5596 statement by August 1 of each year; and (ii) he files with the Commissioner by August 1 of each year a  
 5597 purchasing report stating the number of tons the person purchased during the reporting year and from  
 5598 whom the liming material was purchased. The report shall be made on a form furnished or approved by  
 5599 the Commissioner.

5600 D. The Commissioner may publish and distribute, to each liming material registrant and other  
 5601 interested persons, a composite report showing the tons of liming material sold in each county of the  
 5602 Commonwealth. This report shall in no way divulge the operation of any registrant or licensee.

5603 § 3.2-3706. Labeling.

5604 A. Any liming material sold, offered or exposed for sale in the Commonwealth shall have affixed to  
 5605 the outside of each package in a conspicuous manner, a plainly printed, stamped or otherwise marked  
 5606 label, tag or statement, or in the case of bulk sales, a statement on the delivery slip, setting forth in the  
 5607 English language at least the following information:

5608 1. The quantity statement of the liming material;

5609 2. The brand or trade name of the liming material;

5610 3. In the case of agricultural liming material, the identification of the type of the agricultural liming  
 5611 material as defined under § 3.2-3700, including the chemical analysis corresponding to the type  
 5612 definition;

5613 4. The minimum percentage of available potash, if potash has been added to the liming material;

5614 5. Calcium carbonate equivalent of the liming material as determined by procedures of the  
 5615 Association of Official Analytical Chemists in its most recent publication. Minimum calcium carbonate  
 5616 equivalents as prescribed by regulation;

5617 6. The Effective Neutralizing Value of the liming material as calculated using the following formula:

5618 (percent by weight passing 20 mesh sieves - percent by weight passing 60 mesh sieves) x 0.4 = (a)

5619 (percent by weight passing 60 mesh sieves - percent by weight passing 100 mesh sieves) x 0.8 = (b)

5620 (percent by weight passing 100 mesh sieves) x 1.0 = (c)

5621  $[(a+b+c) \times \text{Calcium Carbonate Equivalent (CCE)}] \text{ divided by } 100 = \text{ENV};$

5622 7. The minimum percentage by weight passing through United States Standard sieves as prescribed  
 5623 by regulations; and

5624 8. The name and principal office address of the manufacturer or distributor of the liming material.

5625 B. For any fluid liming material or any packaged liming material-fertilizer mixture, the label shall  
 5626 also include the following information:

5627 1. The kind of liming material used in the manufacture of the product;

5628 2. The type of agricultural liming material used in the manufacture of the product, if applicable;

5629 3. The guaranteed analysis of the final product; and

5630 4. A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming  
 5631 material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming  
 5632 ton.

5633 C. For any bulk liming material-fertilizer mixture, except when the ingredients are billed separately,  
 5634 the label shall also include the following information:

5635 1. The kind of liming material used in the manufacture of the product;

5636 2. The type of agricultural liming material used in the manufacture of the product, if applicable;

5637 3. The guaranteed analysis of the final product; and

5638 4. A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming  
 5639 material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming  
 5640 ton.

5641 D. If the ingredients of the bulk liming material-fertilizer mixture are billed separately, the label  
 5642 shall also include the following information:

5643 1. The kind of liming material used in the manufacture of the product;

5644 2. The type of agricultural liming material used in the manufacture of the product, if applicable;

5645 3. The dry weight of the liming material used in the manufacture of the product before mixing;

5646 4. The guaranteed analysis of the liming material used in the manufacture of the product before  
 5647 mixing; and

5648 5. The guaranteed analysis of the fertilizer used in the manufacture of the product before mixing.

5649 E. For any industrial co-product used to neutralize soil acid, the product label shall include the  
 5650 statement "Industrial co-product used to neutralize soil acid." If the product is below the Virginia  
 5651 minimum standard requirements for an agricultural liming material as defined in the regulations, the  
 5652 statement "Substandard liming material" shall also be on the label.

5653 F. All liming material shall be labeled as registered with the Commissioner.

5654 G. No information or statement shall appear on any package, label, delivery slip or advertising  
 5655 matter that is false or misleading to the purchaser as to the quality, analysis, kind, type or composition

5656 of the liming material.

5657 H. In the case of any liming material that has been adulterated subsequent to packaging, labeling or  
5658 loading, and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by  
5659 the vendor to the package or delivery slip to identify the kind and degree of such adulteration.

5660 I. The Board may require by regulation that the minimum percentage of calcium oxide, magnesium  
5661 oxide, calcium carbonate, and magnesium carbonate shall be expressed in the following form:

5662 Total Calcium (Ca)..... %

5663 Total Magnesium (Mg)..... %

5664 § 3.2-3707. Inspection, sampling, analysis.

5665 A. The Commissioner shall sample, inspect, analyze, and test liming material distributed within the  
5666 Commonwealth to determine whether such liming material is in compliance with the provisions of this  
5667 chapter. The Commissioner may enter upon any public or private premises during operating hours, or  
5668 any carrier, in order to have access to liming material that is subject to the provisions of this chapter  
5669 and regulations hereunder, and to the records relating to its distribution.

5670 B. The Commissioner shall distribute the results of official analyses of liming material and portions  
5671 of official samples of liming material as provided in regulations.

5672 § 3.2-3708. Stop sale, use, removal or seizure order; review.

5673 A. The Commissioner may issue and enforce a written or printed stop sale, use, removal or seizure  
5674 order to the owner or custodian of any lot of liming material being offered or exposed for sale in  
5675 violation of any of the provisions of this chapter. Such order may provide that such liming material be  
5676 held at a designated place until the owner or custodian of such lot of liming material has complied with  
5677 this chapter and the Commissioner has released the liming material in writing, or such violation has  
5678 been otherwise legally disposed of by written authority.

5679 B. The owner or custodian of such liming material shall have the right to review in accordance with  
5680 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

5681 C. The provisions of this section shall not be construed: (i) as limiting the right of the Commissioner  
5682 to proceed as authorized by other provisions of this chapter; or (ii) as limiting or prohibiting the  
5683 operation of § 2.2-4208.

5684 § 3.2-3709. Assessments for violations of chapter.

5685 A. Any person convicted of violating any provision of this chapter or the regulations adopted  
5686 hereunder shall be subject to a penalty of not less than \$25 nor more than \$200 to be enforced by a  
5687 summary proceeding in an appropriate court.

5688 B. The Commissioner shall make an assessment for variance from guarantee in accordance with the  
5689 regulations established by the Board, not to exceed \$5,000 per occurrence, when any shipment of liming  
5690 material that the Commissioner samples and upon analysis, fails to meet the guarantee for chemicals,  
5691 neutralizing value, or screen size.

5692 C. The person whose name appears on the label of the violative lot of liming material shall pay the  
5693 assessment for variance from guarantee assessed by the Commissioner. The person assessed shall obtain  
5694 a receipt signed by the purchaser for each payment, and promptly forward the receipt to the  
5695 Commissioner. The person whose name appears on the label of the violative lot of liming material shall  
5696 pay the assessment for variance from guarantee within 60 days from date of notice to the person  
5697 assessed. If the purchaser cannot be found, or if the amount due any one purchaser is less than one  
5698 dollar (\$1.00), the person whose name appears on the label of the violative lot of liming material shall  
5699 pay the assessment for variance from guaranty to the Commissioner, who shall deposit the same in the  
5700 state treasury, and report to the State Comptroller, who shall credit the same to the Sale of Substandard  
5701 Liming Material Fund, which fund is hereby created. The fund shall be a special nonreverting fund in  
5702 the state treasury, to be disbursed as provided in subsection D.

5703 D. Such funds as shall thereafter be found to be payable to the purchasers of lots of liming material  
5704 on which the assessments for variance from guaranty were made shall be paid from the Sale of  
5705 Substandard Liming Material Fund on order of the Commissioner. The State Comptroller shall transfer  
5706 any balance remaining in such Fund for a period of 90 days to the credit of the fund specified in  
5707 § 3.2-3710.

5708 § 3.2-3710. Disposition of funds.

5709 All fees, penalties, funds (including those transferred as specified in subsection D of § 3.2-3709 and  
5710 except as provided in subsection C of § 3.2-3709), and assessments under this chapter that the  
5711 Commissioner receives shall be paid into the Feed, Lime, Fertilizer, and Animal Remedies Fund,  
5712 established in § 3.2-3617, to be used in carrying out the purpose and provisions of this chapter, to  
5713 include inspection, sampling and other expenses; except that the Commissioner shall deposit, to the  
5714 credit of the Virginia Agricultural Foundation Fund, five cents (\$0.05) per ton of liming material sold  
5715 per reporting year of the inspection fee.

5716 § 3.2-3711. Seizure of liming material when assessments not paid.

5717 *The Commissioner may seize any liming material belonging to any person whose name appears on*  
 5718 *the label of the violative lot of liming material, if such person fails to pay the assessment for variance*  
 5719 *from guarantee within 60 days after the Commissioner has given notice to such person.*

5720 *§ 3.2-3712. Appeal from Commissioner's actions.*

5721 *Any person aggrieved by any action of the Commissioner under provisions of this chapter shall have*  
 5722 *the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et*  
 5723 *seq.).*

5724 *§ 3.2-3713. Commissioner's actions.*

5725 *Nothing in this chapter shall require the Commissioner to report for prosecution, or institute seizure*  
 5726 *proceedings, where the Commissioner considers the violations of this chapter to be minor. In such*  
 5727 *cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the*  
 5728 *public interest will be best served by so doing.*

5729 *§ 3.2-3714. Duty of attorneys for the Commonwealth.*

5730 *It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of*  
 5731 *this chapter, and to whom any violation is reported, to commence proceedings and prosecute in an*  
 5732 *appropriate court without delay.*

5733 *§ 3.2-3715. Prohibited acts; penalty.*

5734 *A. It is unlawful to:*

5735 *1. Sell or offer to sell any liming material unless it complies with provisions of this chapter;*  
 5736 *2. Sell or offer for sale liming material that contains toxic materials in quantities injurious to plants*  
 5737 *or animals; and*

5738 *3. Hinder or obstruct in any way the Commissioner in the performance of his official duties.*

5739 *B. Any person who violates any provision of this chapter is guilty of a Class 3 misdemeanor.*

5740 *CHAPTER 38.*

5741 *PLANTS AND PLANT PRODUCTS INSPECTION.*

5742 *§ 3.2-3800. Definitions.*

5743 *As used in this chapter, unless the context requires a different meaning:*

5744 *"Dealer" means any person that acquires nursery stock for the purpose of resale and distribution*  
 5745 *who is not a grower of nursery stock.*

5746 *"Inspection certificate" means a document in any form issued by the Commissioner, or the*  
 5747 *appropriate official from another state, declaring an item or location to be apparently free from plant*  
 5748 *pests. Inspection certificates include nursery stock certificates, phytosanitary stock certificates,*  
 5749 *state-of-origin certificates, or any other certification tags, seals, and stamps that verify compliance with*  
 5750 *this chapter or any regulations adopted hereunder.*

5751 *"Nursery" means any premises where nursery stock is propagated, grown, fumigated, treated, packed,*  
 5752 *stored, or otherwise prepared for sale or distribution.*

5753 *"Nursery stock" means all trees, shrubs, woody vines (including ornamentals), bush fruits,*  
 5754 *grapevines, fruit trees, and nut trees offered for sale and distribution; all buds, grafts, scions, and*  
 5755 *cuttings from such plants; and any container, soil, and other packing material with such plants or plant*  
 5756 *products. It shall also mean herbaceous plants (including strawberry plants, narcissus plants, and*  
 5757 *narcissus bulbs) if the Board determines that controlling the movement of such plants or bulbs is*  
 5758 *necessary to control any plant pest. Unless designated by the Board, nursery stock shall not include*  
 5759 *florist or greenhouse plants for inside culture or use.*

5760 *"Nurseryman" means any person that produces nursery stock for sale or distribution.*

5761 *"Person" means the term as defined in § 1-230. The term also means any society.*

5762 *"Plant pest" means any living stage of insects, mites, nematodes, slugs, snails, protozoa, other*  
 5763 *invertebrate animals, bacteria, fungi, other parasitic plants, parasitic plant parts, viruses, any other*  
 5764 *similar organism, or any infectious substances that can injure, infect, or damage any plants or plant*  
 5765 *products.*

5766 *"Plants or plant products" means any trees, shrubs, vines, forage, fiber, cereal, and all other plants;*  
 5767 *cuttings, grafts, scions, buds, and all other plant parts; fruit, vegetables, roots, bulbs, seeds, wood,*  
 5768 *lumber, and all other plant products; or any container, soil, and packing material with plants or plant*  
 5769 *products.*

5770 *§ 3.2-3801. Powers and duties of the Commissioner.*

5771 *A. The Commissioner shall:*

5772 *1. Protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests;*  
 5773 *and*

5774 *2. Promptly credit all moneys collected by him as repayment to the fund in the state treasury to*  
 5775 *which such moneys are owed.*

5776 *B. The Commissioner may enter into reciprocal agreements with officers of other states so that*  
 5777 *nursery stock may be sold or delivered in the Commonwealth by out-of-state nurserymen or dealers*  
 5778 *without the payment of a Virginia registration fee, provided that like privileges are granted to Virginia*

5779 nurserymen or dealers by such other states.

5780 § 3.2-3802. Permit required to sell or transport plant pests.

5781 It is unlawful to sell, barter, offer for sale, move, transport, deliver, ship, or offer for shipment any  
5782 plant pests without a permit from the Commissioner stating that such plant pests are: (i) not injurious;  
5783 (ii) generally present already; or (iii) to be used for scientific purposes subject to specified safeguards.

5784 § 3.2-3803. Licenses required of nurserymen or dealers; inspection fees.

5785 A. It is unlawful for any nurseryman or dealer to offer for sale, sell, deliver, or give away nursery  
5786 stock unless such person shall have first procured a license from the Commissioner.

5787 B. The Commissioner shall not issue any license to a dealer except upon the payment of \$25 for  
5788 each separate sales location.

5789 C. The Commissioner shall not issue any license to a nurseryman except upon the payment of \$75  
5790 and receipt of an inspection certificate. At the issuance of the license, each nursery shall also pay an  
5791 inspection fee of \$1.50 for each acre above 50 acres of nursery stock inspected by the Commissioner.

5792 D. All licenses shall expire on December 31.

5793 § 3.2-3804. Inspection certificate required to transport nursery stock.

5794 A. It is unlawful to knowingly deliver, send, ship, or transport nursery stock within or into the  
5795 Commonwealth without an inspection certificate clearly attached to each carload, truckload, box, bale,  
5796 or package.

5797 B. Nursery stock brought into the Commonwealth under an inspection certificate may be sold and  
5798 moved by a licensed nurseryman or dealer or agent, but this shall not preclude inspection at any time  
5799 within the Commonwealth.

5800 § 3.2-3805. Inspections upon request.

5801 Any person may apply to the Commissioner for an inspection certificate. The applicant shall agree to  
5802 pay the expenses incurred by the Commissioner, who may respond to the applicant at his discretion. The  
5803 Commissioner shall issue an inspection certificate upon successful completion of the inspection and the  
5804 payment of inspection expenses.

5805 § 3.2-3806. Authority for inspections; right of entry.

5806 A. All nursery stock or plant products for sale or distribution shall be subject to inspection at any  
5807 time.

5808 B. The Commissioner may enter any nursery or dealer premises, other than a private dwelling, at  
5809 reasonable times and under reasonable circumstances to examine nursery stock or plant products for  
5810 sale or distribution to detect plant pests and discharge the duties prescribed herein.

5811 C. The Commissioner may require any person who possesses nursery stock or plant products for sale  
5812 or distribution to present those items for inspection and to provide full information related to origin,  
5813 number, and destination.

5814 § 3.2-3807. Eradication and control measures.

5815 The Commissioner may order the owner or custodian of any infested nursery stock or plant products  
5816 for sale or distribution to take eradication and control measures. The owner or custodian shall promptly  
5817 carry out the order of the Commissioner. The Commissioner may take the eradication or control  
5818 measures required by the order if the owner or custodian refuses or neglects to carry out the order.

5819 § 3.2-3808. Nursery stock or plant products for sale or distribution subject to stop delivery or stop  
5820 sale.

5821 A. The Commissioner may stop delivery, stop sale, treat, or order returned to point of origin any  
5822 nursery stock or plant products for sale or distribution if he finds: (i) a plant pest infection; or (ii) the  
5823 exhibition of visual symptoms of a plant pest infestation.

5824 B. The Commissioner may stop delivery or stop sale of: (i) any nursery stock or plant products for  
5825 sale or distribution in the possession of an unlicensed nurseryman or dealer; or (ii) any nursery stock  
5826 or plant products for sale or distribution that are not accompanied by an inspection certificate.

5827 C. Any order of the Commissioner under this section shall be carried out at the owner's expense.

5828 § 3.2-3809. Seizure and disposition of nursery stock or plant products for sale or distribution.

5829 Any nursery stock or plant products for sale or distribution shall be subject to seizure on complaint  
5830 of the Commissioner to the appropriate court. If the court finds the nursery stock or plant products for  
5831 sale or distribution to be in violation of this chapter and orders condemnation, such nursery stock or  
5832 plant products shall be seized, destroyed, treated, or returned to the point of origin at the owner's  
5833 expense.

5834 § 3.2-3810. Penalty for violation.

5835 A. The Commissioner may refuse, suspend, or cancel any license upon satisfactory evidence that the  
5836 applicant or licensee has violated any of the provisions of this chapter or regulations adopted  
5837 hereunder.

5838 B. Any person violating any of the provisions of this chapter or regulations adopted hereunder or  
5839 interfering in any way with the Commissioner in the discharge of his duties herein is guilty of a Class 1

5840 *misdemeanor.*

5841 § 3.2-3811. *Judicial review.*

5842 *Judicial review of any action of the Board or the Commissioner shall be in accordance with the*  
 5843 *Administrative Process Act (§ 2.2-4000 et seq.).*

5844 *CHAPTER 39.*

5845 *PESTICIDE CONTROL.*

5846 *Article 1.*

5847 *General Provisions.*

5848 § 3.2-3900. *Definitions.*

5849 *As used in this chapter, unless the context requires a different meaning:*

5850 *"Active ingredient" means (in the case of a pesticide other than a plant regulator, defoliant,*  
 5851 *desiccant, or anti-desiccant) an ingredient that will prevent, destroy, repel, or mitigate insects, fungi,*  
 5852 *rodents, weeds, or other pests.*

5853 *"Agricultural commodity" means any plant or part thereof, animal, or animal product, produced by a*  
 5854 *person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers,*  
 5855 *aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other*  
 5856 *comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.*

5857 *"Board" means the Pesticide Control Board.*

5858 *"Certificate" means the document issued to a certified applicator or registered technician who has*  
 5859 *completed all the requirements of Article 3.*

5860 *"Certification" or "certified" means the recognition granted by the Board to an applicator who has*  
 5861 *completed all the requirements of Article 3.*

5862 *"Certified applicator" means a person who: (i) has satisfactorily completed the Board requirements*  
 5863 *for certification as a commercial applicator, registered technician, or private applicator; and (ii) has*  
 5864 *been issued a valid certificate.*

5865 *"Commercial applicator" means any person who has completed the requirements for certification to*  
 5866 *use or supervise the use of any pesticide for any purpose or on any property other than as provided in*  
 5867 *the definition of private applicator.*

5868 *"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage*  
 5869 *to drop from a plant, with or without causing abscission.*

5870 *"Desiccant" means any substance or mixture of substances intended for artificially accelerating the*  
 5871 *drying of plant tissue.*

5872 *"Device" means any instrument or contrivance intended for: (i) trapping, destroying, repelling, or*  
 5873 *mitigating insects or rodents; or (ii) destroying, repelling, or mitigating fungi, bacteria, weeds or other*  
 5874 *pests as may be designated by the Commissioner. Device shall not include treated wood products,*  
 5875 *simple mechanical devices such as rattraps, or equipment used for the application of pesticide when*  
 5876 *sold separately.*

5877 *"Fumigant" means any substance or mixture of substances that emits or liberates gases, fumes, or*  
 5878 *vapors capable of destroying vermin, rodents, insects, and other pests.*

5879 *"Fungicide" means any substance or mixture of substances intended for preventing, destroying,*  
 5880 *repelling, or mitigating any fungi or plant disease.*

5881 *"Herbicide" means any substance or mixture of substances intended for preventing, destroying,*  
 5882 *repelling, or mitigating any weed.*

5883 *"Ingredient statement" or "guaranteed analysis statement" means a statement containing: (i) the*  
 5884 *name and percentage of each active ingredient; (ii) the total percentage of the inert ingredients; and*  
 5885 *(iii) if the pesticide contains arsenic in any form, the percentages of total and water soluble arsenic.*

5886 *"Insect" means any small invertebrate animal generally having a segmented form and belonging to*  
 5887 *the class Insecta including beetles, bugs, and bees. For purposes of this act, the term insect shall also*  
 5888 *mean classes of arthropods whose members are usually wingless and have more than six legs including*  
 5889 *spiders, mites, ticks, centipedes, and wood lice.*

5890 *"Insecticide" means any substance or mixture of substances intended for preventing, destroying,*  
 5891 *repelling, or mitigating any insects that may be present in any environment whatsoever.*

5892 *"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or*  
 5893 *the immediate container thereof, and the outside container or wrapper of the retail package, if any, of*  
 5894 *the pesticide or device.*

5895 *"Labeling" means all labels and other written, printed, or graphic matter: (i) upon the pesticide or*  
 5896 *device or any of its containers or wrappers; (ii) accompanying the pesticide or device at any time; or*  
 5897 *(iii) referenced on the label or in literature accompanying the pesticide or device. Labeling shall not*  
 5898 *include current official publications of the agricultural experiment station, the Virginia Polytechnic*  
 5899 *Institute and State University, the Department, the State Board of Health, or similar federal or state*  
 5900 *institutions when accurate, nonmisleading reference is made to such official publications and such*  
 5901 *agencies are authorized by law to conduct research in the field of pesticides.*



5902 "Licensed" or "licensee" means a person issued a license by the Board to engage in the sale,  
5903 storage, distribution, recommendation, or application of pesticides for compensation.

5904 "Pest" means any deleterious organism that is: (i) any vertebrate animal other than man; (ii) any  
5905 invertebrate animal excluding any internal parasite of living man or other living animals; (iii) any plant  
5906 growing where not wanted, and any plant part such as a root; or (iv) any bacterium, virus, or other  
5907 microorganisms (except for those on or in living man or other living animals and those on or in  
5908 processed food or processed animal feed, beverages, drugs as defined by the Federal Food, Drug, and  
5909 Cosmetic Act at 21 U.S.C. § 321(g)(1), and cosmetics as defined by the Federal Food, Drug, and  
5910 Cosmetic Act at 21 U.S.C. § 321(i)). Any organism classified as endangered, threatened, or otherwise  
5911 protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.

5912 "Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying,  
5913 repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, other forms of plant or animal life,  
5914 bacterium, or viruses, except viruses on or in living man or other animals, which the Commissioner  
5915 shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant  
5916 regulator, defoliant, or desiccant; and (iii) any substance intended to become an active ingredient in any  
5917 substance defined in clause (i) and (ii).

5918 "Pesticide business" means any person engaged in the business of: distributing, applying or  
5919 recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the  
5920 user. The term "pesticide business" does not include: (i) wood treaters not for hire; (ii) seed treaters not  
5921 for hire; (iii) operations that produce agricultural products, unless the owners or operators of such  
5922 operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for  
5923 sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in  
5924 connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the  
5925 Board.

5926 "Plant regulator" means any substance or mixture of substances, intended through physiological  
5927 action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering  
5928 the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to  
5929 the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant  
5930 inoculants, and soil amendments.

5931 "Private applicator" means an individual who uses or supervises the use of any pesticide that is  
5932 classified for restricted use for purposes of producing any agricultural commodity on property owned or  
5933 rented by him or his employer or, if applied without compensation other than trading of personal  
5934 services between producers of agricultural commodities, on the property of another person.

5935 "Registered technician" means an individual who has satisfactorily completed the Board requirements  
5936 for certification to apply general use pesticides, and to apply restricted use pesticides while under the  
5937 direct supervision of a certified commercial applicator. Registered technicians render services similar to  
5938 those of a certified commercial applicator, but have not completed all the requirements to be eligible for  
5939 certification as a commercial applicator.

5940 "Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

5941 "Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as  
5942 restricted by the Administrator of the U.S. Environmental Protection Agency.

5943 "Rodenticide" means any substance or mixture of substances intended for preventing, destroying,  
5944 repelling or mitigating rodents or any other vertebrate animal declared by the Commissioner to be a  
5945 pest.

5946 "Serious violation" means a violation of this chapter or regulation adopted hereunder that results in  
5947 a substantial probability of death or serious physical harm to persons, serious harm to property, or  
5948 serious harm to the environment unless the person or licensee did not or could not with the exercise of  
5949 reasonable diligence know of the violation.

5950 "State special use" or "pesticide classified for restricted use in the Commonwealth" means any  
5951 pesticide that is judged by the Board after special review to be so hazardous or injurious to persons,  
5952 pollinating insects, animals, crops, wildlife, lands, or the environment (other than the pests it is intended  
5953 to prevent, destroy, control, or mitigate) that additional restrictions on its sale, purpose, use, or  
5954 possession are required.

5955 "Under the direct supervision of" means the act or process whereby the application of a pesticide is  
5956 made by a competent person acting under the instructions and control of a certified applicator who is  
5957 responsible for the actions of that person.

5958 "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the  
5959 environment, taking into account the economic, social, and environmental costs and benefits of the use  
5960 of any pesticide.

5961 "Use" means the employment of a pesticide for the purposes of: (i) preventing, destroying, repelling,  
5962 or mitigating any pest; or (ii) regulating plant growth, causing defoliation or desiccation of plants. The

5963 term "use" shall include applying, mixing, handling, or transferring a pesticide after the manufacturer's  
 5964 original seal is broken, and any act consistent with the label.

5965 § 3.2-3901. The Pesticide Control Board; purpose.

5966 The Pesticide Control Board is established as a policy board in the executive branch of state  
 5967 government. The purpose of the Board is to carry out the provisions of this chapter.

5968 § 3.2-3902. Membership; terms; quorum; meetings.

5969 A. The Board shall have a total of 12 members, nine of whom shall be nonlegislative citizen  
 5970 members, appointed by the Governor and approved by the General Assembly as follows: two members  
 5971 representing the agricultural or forestal production industries; two members representing the  
 5972 commercial sale or application of pesticides sector, at least one of whom shall be a structural  
 5973 commercial applicator; two representatives from the public health and environmental community; and  
 5974 three citizen members, one of whom the Governor shall appoint as chairman. The State Forester, the  
 5975 Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State  
 5976 University, and the Dean for the School of Agriculture at Virginia State University who shall serve as  
 5977 ex officio members of the Board with voting privileges. Nonlegislative citizen members of the Board  
 5978 shall be citizens of the Commonwealth.

5979 B. Nonlegislative citizen members shall be appointed for a term of four years. Ex officio members of  
 5980 the Board shall serve terms coincident with their terms of office. Appointments to fill vacancies, other  
 5981 than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same  
 5982 manner as the original appointments. All members may be reappointed.

5983 C. A quorum shall consist of seven members.

5984 D. The Board shall meet quarterly and at the call of the chairman.

5985 E. The Board shall adopt rules and procedures for the conduct of business.

5986 § 3.2-3903. Compensation; expenses.

5987 Members shall receive such compensation for the performance of their duties as provided in  
 5988 § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the  
 5989 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of  
 5990 compensation and expenses of the members shall be provided from the Fund.

5991 § 3.2-3904. Powers and duties of the Board.

5992 The Board shall have the following powers and duties:

5993 1. Appoint advisory committees as necessary to implement this chapter;

5994 2. Contract for research projects and establish priorities;

5995 3. Consult with the Department of Environmental Quality regarding compliance with the applicable  
 5996 waste management regulations for the safe and proper disposal of pesticide concentrates, used pesticide  
 5997 containers, and unused pesticides;

5998 4. Consult with the Virginia Department of Labor and Industry regarding compliance with the  
 5999 applicable standards and regulations needed to ensure safe working conditions for pest control and  
 6000 agricultural workers;

6001 5. Consult with the Department of Game and Inland Fisheries regarding standards for the protection  
 6002 of wildlife and fish and to further promote cooperation with respect to programs established by the  
 6003 Department of Game and Inland Fisheries for the protection of endangered or threatened species;

6004 6. Inform the citizens of the desirability and availability of nonchemical and less toxic alternatives to  
 6005 chemical pesticides and the benefits of the safe and proper use of pest control products while promoting  
 6006 the use of integrated pest management techniques and encouraging the development of nonchemical and  
 6007 less toxic alternatives to chemical pesticides;

6008 7. Require that pesticides are adequately tested and are safe for use under local conditions;

6009 8. Require that individuals who sell, store, or apply pesticides commercially are adequately trained  
 6010 and observe appropriate safety practices;

6011 9. Cooperate, receive grants-in-aid, and enter into agreements with any federal, state, or local  
 6012 agency to promote the purposes of this chapter;

6013 10. Consult with the Department of Health regarding compliance with public health standards;

6014 11. Designate any pesticide as state special use or classified for restricted use; and

6015 12. Restrict the distribution, possession, sale, or use of tributyltin compounds.

6016 § 3.2-3905. Staffing.

6017 The Department shall provide staff support to the Board. All agencies of the Commonwealth shall  
 6018 provide assistance to the Board, upon request.

6019 § 3.2-3906. Board to adopt regulations.

6020 The Board may adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.),  
 6021 including:

6022 1. Licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides;

6023 2. Registration of pesticides for manufacture, distribution, sale, storage, or use;

6024 3. Requiring reporting and record keeping related to licensing and registration;

- 6025 4. Establishing training, testing and standards for certification of commercial applicators, registered  
6026 technicians, and private applicators;
- 6027 5. Revoking, suspending or denying licenses (business), registration (products), and certification or  
6028 certificate (applicators or technicians);
- 6029 6. Requiring licensees and certificate holders to inform the public when using pesticides in and  
6030 around structures;
- 6031 7. Establishing a fee structure for licensure, registration and certification to defray the costs of  
6032 implementing this chapter;
- 6033 8. Classifying or subclassifying certification or certificates to be issued under this chapter. Such  
6034 classifications may include agricultural, forest, ornamental, aquatic, right-of-way or industrial,  
6035 institutional, structural or health-related pest control;
- 6036 9. Restricting or prohibiting the sale or use and disposal of any pesticide or pesticide container or  
6037 residuals that: (i) undesirably persists in the environment or increases due to biological amplification or  
6038 unreasonable adverse effects on the environment; or (ii) because of toxicity or inordinate hazard to  
6039 man, animal, bird or plant may be contrary to the public interest; and
- 6040 10. Other regulations necessary or convenient to carry out the purposes of this chapter.
- 6041 § 3.2-3907. Delegation of authority; exclusive authority to regulate.
- 6042 The Board may delegate any authority vested in it under this chapter to the Commissioner or other  
6043 employees of the Department. The Board shall have the exclusive authority to regulate pesticides in  
6044 accordance with this chapter. The Board's authority to regulate pesticides under this chapter shall not  
6045 be delegated to any locality.
- 6046 § 3.2-3908. Protection of trade secrets and other information.
- 6047 A. In submitting data required by this chapter, the applicant may: (i) clearly mark any portions that  
6048 he believes are trade secrets or commercial or financial information; and (ii) submit such marked  
6049 materials separately from other material.
- 6050 B. The Commissioner shall not make public information that, in his judgment, contains or relates to  
6051 trade secrets or commercial or financial information. The Commissioner may reveal information:
- 6052 1. Relating to formulas of products to any consulting federal, state, or local agency at a public  
6053 hearing or in findings of fact issued by the Commissioner or Board;
- 6054 2. To any person in connection with a public proceeding under law or regulation if the  
6055 Commissioner finds the information relevant to a determination that a pesticide, or any ingredient of a  
6056 pesticide, causes unreasonable adverse effects on health or the environment;
- 6057 3. To contractors with the Commonwealth and employees of such contractors if the Commissioner  
6058 finds disclosure necessary and requires, as a condition to the disclosure of information, that the person  
6059 receiving it take any security precautions as provided for by regulation;
- 6060 4. Concerning production, distribution, sale, or inventories in connection with a public proceeding to  
6061 determine whether a pesticide or any ingredient of a pesticide causes unreasonable adverse effects on  
6062 health or the environment if the Commissioner determines that disclosure is necessary and in the public  
6063 interest; and
- 6064 5. Concerning the objectives, methodology, results, or significance of any test or experiment  
6065 performed on or with a registered or previously registered pesticide or its separate ingredients,  
6066 impurities, or degradation products; any information concerning the effects of such pesticide on any  
6067 organism or the behavior of such pesticide in the environment including data on safety to fish and  
6068 wildlife, humans and other mammals, plants, animals, and soil; and studies on persistence, translocation  
6069 and fate in the environment, and metabolism. Information concerning: (i) manufacturing or quality  
6070 control processes; (ii) the details of methods for testing, detecting, or measuring the quantity of any  
6071 deliberately added inert ingredient; or (iii) the identity or percentage quantity of any deliberately added  
6072 inert ingredient, shall not be revealed unless the Commissioner determines that disclosure is necessary  
6073 to protect against an unreasonable risk of injury to health or the environment.
- 6074 C. 1. The Commissioner shall notify the applicant or registrant in writing by certified mail if he  
6075 proposes to release information that the applicant or registrant marked as confidential. The  
6076 Commissioner shall not release such information for inspection until 30 days after receipt of the notice  
6077 by the applicant or registrant. During this period, the applicant or registrant may institute an action in  
6078 circuit court for a declaratory judgment as to whether such information is subject to protection.
- 6079 2. The Commissioner shall notify the submitter by certified mail if he proposes to release information  
6080 under subdivision B 4 or B 5. The Commissioner shall not release such information without the  
6081 submitter's consent until 30 days after receipt of the notice by the submitter. The Commissioner may  
6082 select alternative notice procedures and a shorter period of notice if he finds that disclosure is  
6083 necessary to avoid or mitigate an imminent and substantial risk or injury to the public health. During  
6084 such period the submitter may institute an action in circuit court to enjoin or limit the proposed  
6085 disclosure. The court shall give expedited consideration to any such action. The court may enjoin

6086 disclosure, limit the disclosure, or limit the parties to whom disclosure shall be made to the extent that:  
 6087 (i) the proposed disclosure of information under subdivision B 4 is not required to protect against an  
 6088 unreasonable risk of injury to health or the environment; or (ii) the public interest in the disclosure of  
 6089 information in the public proceeding under subdivision B 5 does not outweigh the interests in preserving  
 6090 the confidentiality of the information.

6091 D. The Commissioner shall not knowingly disclose information submitted by an applicant or  
 6092 registrant under this chapter to any employee or agent of any entity engaged in the production, sale, or  
 6093 distribution of pesticides in countries other than the United States or to any person who intends to  
 6094 deliver such data to any such entity unless the applicant or registrant has consented to disclosure. The  
 6095 Commissioner shall require an affirmation from any person who intends to inspect data that such  
 6096 person does not seek access to the data for purposes of delivering it or offering it for sale to any such  
 6097 business or entity or its agents or employees and will not purposefully deliver or negligently cause the  
 6098 data to be delivered to such business or entity or its agents or employees.

6099 E. The Commissioner shall maintain records of the names of persons to whom data are disclosed  
 6100 under this section and the persons or organizations they represent and shall inform the applicant or  
 6101 registrant of the names and affiliation of such persons.

6102 F. Any person, who, with intent to defraud, uses or reveals information relative to formulas of  
 6103 products acquired pursuant to this chapter is guilty of a Class 6 felony.

6104 § 3.2-3909. Reports of pesticide accidents and incidents.

6105 The Board shall by regulation require the reporting of significant pesticide accidents or incidents  
 6106 posing a threat to humans or the environment to appropriate governmental agencies. To the extent  
 6107 feasible, accident reporting requirements shall be consistent with similar reports required under other  
 6108 laws.

6109 § 3.2-3910. Complaints to Commissioner or the Board.

6110 Any person may register a written complaint with the Commissioner or the Board relating to the  
 6111 sale, use, storage, handling, or disposal of any pesticide. The Commissioner or the Board shall institute  
 6112 an investigation of the alleged damage caused by such pesticide. The Commissioner may seek the advice  
 6113 of other state or federal agencies or institutions. When it is determined that a violation has occurred,  
 6114 the Commissioner shall proceed as provided in § 3.2-3946.

6115 § 3.2-3911. Damages resulting from pesticide use or application.

6116 A. Any person claiming damages from the use or application of any pesticide classified for restricted  
 6117 use shall file with the Commissioner a written statement within 60 days after the date that damages  
 6118 occurred and, if a growing crop is alleged to have been damaged, prior to the time that 25 percent of  
 6119 the crop has been harvested. Such statement shall contain: (i) the name of the person allegedly  
 6120 responsible for the application of such pesticide; (ii) the name of the owner or lessee of the property  
 6121 where the crop is grown and the damage is alleged to have occurred; and (iii) the date of the alleged  
 6122 damage. Upon receipt of the statement, the Commissioner shall notify the certificate holder and the  
 6123 owner or lessee of the property or other person who may be charged with the responsibility of the  
 6124 damages claimed, and furnish copies of the statement as requested.

6125 B. The Commissioner shall inspect damages where possible and make his findings available to the  
 6126 parties. The claimant shall permit the Commissioner, the certificate holder, and his representatives to  
 6127 observe within reasonable hours any plants, animals, or other property alleged to have been damaged.  
 6128 Failure of the claimant to permit such observation and examination of the damaged property shall  
 6129 relieve the Commissioner of responsibility to take further action with reference to that claim.

6130 C. The filing of a statement or the failure to file a statement need not be alleged in any complaint  
 6131 filed in a court of law. The failure to file the statement shall not be considered a bar to the  
 6132 maintenance of any criminal or civil action.

6133 § 3.2-3912. Pesticide Control Fund established.

6134 There is hereby created in the state treasury a special nonreverting fund to be known as the  
 6135 Pesticide Control Fund, hereafter referred to as "the Fund." The Fund shall be established on the books  
 6136 of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid  
 6137 into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in  
 6138 the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the  
 6139 end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the  
 6140 Fund shall be used by the Department solely for carrying out the purposes of this chapter. Expenditures  
 6141 and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the  
 6142 Comptroller upon written request signed by the Commissioner.

6143 § 3.2-3913. Exclusion of medicinal and toilet preparations.

6144 This chapter shall not apply to any preparation, drug, or chemical intended solely for medicinal use  
 6145 or for toilet purposes.

6146  
 6147

- 6148 § 3.2-3914. *Registration required.*
- 6149 Every pesticide manufactured, distributed, sold, offered for sale, used, or offered for use shall be
- 6150 registered in accordance with regulations adopted by the Board. Registration shall lapse unless the
- 6151 registrant pays an annual fee set forth in regulations adopted by the Board.
- 6152 § 3.2-3915. *Products registered under Federal Act.*
- 6153 The Commissioner may register and permit the sale and use of any pesticide registered under the
- 6154 Federal Insecticide, Fungicide and Rodenticide Act. Such products shall be subject to the registration
- 6155 fees and all other provisions of this chapter.
- 6156 § 3.2-3916. *Products registered as single pesticide.*
- 6157 Products that: (i) have the same formula; (ii) are manufactured by the same person; (iii) include
- 6158 labelings with the same claims; and (iv) bear designations identifying the products as the same pesticide
- 6159 may be registered as a single pesticide without an additional fee.
- 6160 § 3.2-3917. *Change in labeling or formulas without reregistration.*
- 6161 The Commissioner may allow a change in the labeling or formulas of a pesticide within a
- 6162 registration period without requiring reregistration provided that such changes do not lower the efficacy
- 6163 of the product.
- 6164 § 3.2-3918. *Statement to be filed by registrant.*
- 6165 A. The registrant shall file a statement with the Commissioner including:
- 6166 1. The name and address of the registrant and the name and address of the person whose name will
- 6167 appear on the label, if other than the registrant;
- 6168 2. The name of the pesticide;
- 6169 3. A complete copy of the labeling accompanying the pesticide and a statement of all claims made
- 6170 and to be made for it including directions for use;
- 6171 4. If requested, a full description of the tests made and the results thereof upon which the claims are
- 6172 based; and
- 6173 5. Other information requested by the Board such as product efficacy, all known health and
- 6174 environmental impacts, and known incidents of human or wildlife illnesses.
- 6175 B. In the case of renewal of registration, a statement shall be required only with respect to
- 6176 information different from that furnished when the pesticide was last registered or in response to
- 6177 additional requirements imposed by the Board.
- 6178 § 3.2-3919. *Each brand or grade to be registered; fees.*
- 6179 Before manufacturing, distributing, selling, offering for sale, or offering for use any pesticide, the
- 6180 registrant shall register each brand or grade of a pesticide with the Commissioner annually upon forms
- 6181 furnished by the Department and shall pay the Department an annual registration fee for each brand or
- 6182 grade offered for sale or use. The Commissioner shall issue a registration entitling the registrant to
- 6183 manufacture, distribute, or sell all registered brands until the expiration of the registration.
- 6184 § 3.2-3920. *Submission of complete formula.*
- 6185 The Commissioner may require the submission of the complete formula of any pesticide at any time.
- 6186 § 3.2-3921. *Requirements for registration.*
- 6187 The Commissioner shall register a pesticide if: (i) he finds the composition of the pesticide warrants
- 6188 any proposed claims; and (ii) the pesticide, its labeling, and any other submitted material comply with
- 6189 the requirements of this chapter. If either condition is not met, the Commissioner shall notify the
- 6190 registrant of the manner in which the pesticide, labeling, or other material fails to comply with the
- 6191 requirements for registration so as to afford the registrant an opportunity to make the necessary
- 6192 correction.
- 6193 § 3.2-3922. *When Commissioner may refuse or cancel registration.*
- 6194 The Commissioner may refuse to register or cancel the registration of any brand of pesticide upon
- 6195 satisfactory proof that the registrant has committed any of the acts prohibited by subsection A of
- 6196 § 3.2-3939 or any regulation adopted by the Board. No registration shall be revoked or refused until the
- 6197 registrant shall have been given a hearing by the Commissioner.
- 6198 § 3.2-3923. *When Board may refuse or cancel registration.*
- 6199 The Board may deny or cancel the registration of a pesticide if it finds after a public hearing that:
- 6200 1. Considering the available information on the benefits of a product and any associated risks, use of
- 6201 the pesticide has demonstrated unreasonable adverse effects on the environment;
- 6202 2. A false or misleading statement about the pesticide has been made or implied by the registrant or
- 6203 the registrant's agent in writing, verbally, or through any form of advertising literature; or
- 6204 3. The registrant or the pesticide fails to comply with a requirement of this chapter or a regulation
- 6205 adopted hereunder.
- 6206 § 3.2-3924. *Annual business license required.*
- 6207 A. No pesticide business may sell, distribute, or store any pesticide without a pesticide business
- 6208 license issued pursuant to regulations adopted by the Board. The Board shall adopt regulations

6209 *exempting retailers of limited quantities of nonrestricted use pesticides including grocery stores,*  
 6210 *convenience stores, drug stores, veterinarians, and other businesses who sell pesticides primarily for*  
 6211 *limited household use.*

6212 *B. No person may apply or recommend for use any pesticide commercially without a pesticide*  
 6213 *business license and the employment of a certified commercial applicator responsible for: (i) the safe*  
 6214 *application of the pesticides; and (ii) providing recommendations for the use of pesticides.*

6215 *C. An annual business license shall be required for each location or outlet that sells, distributes,*  
 6216 *stores, applies, or recommends for use any pesticide.*

6217 *§ 3.2-3925. Fees.*

6218 *A. A nonrefundable annual licensing fee shall be required with each application for a pesticide*  
 6219 *business license.*

6220 *B. If a person fails to apply for renewal of a pesticide business license prior to expiration, the*  
 6221 *applicant shall pay the licensing fee and a late fee of 20 percent of the licensing fee as a condition of*  
 6222 *renewal.*

6223 *§ 3.2-3926. Records.*

6224 *A. As a condition of obtaining or renewing a license, each pesticide business required to be licensed*  
 6225 *shall maintain records as required by the Board.*

6226 *B. The Board may require the submission of records from a licensed pesticide business. Failure to*  
 6227 *submit a record requested by the Board is a ground for license revocation.*

6228 *§ 3.2-3927. Evidence of financial responsibility required of licensed pesticide business.*

6229 *A. The Board shall not issue a pesticide business license until the business has furnished evidence of*  
 6230 *financial responsibility, consisting of a liability insurance policy from a person authorized to do*  
 6231 *business in the Commonwealth that protects persons who suffer legal damages as a result of the use of*  
 6232 *any pesticide by the applicant. Financial responsibility need not apply to damages or injury to*  
 6233 *agricultural crops, plants, or property being worked upon by the applicant. The Board by regulation*  
 6234 *may establish and prescribe the conditions for financial responsibility.*

6235 *B. The amount of financial responsibility shall be established by the Board at a minimum of*  
 6236 *\$100,000 for property damage; \$100,000 for personal injury to or death of one person; and \$300,000*  
 6237 *per occurrence. The Board may accept a liability insurance policy containing a deductible clause in an*  
 6238 *amount considered usual and customary in the industry, with the provision that the insurer shall pay all*  
 6239 *claims in full and that the amount of the deductible shall be recoverable only from the insured. The*  
 6240 *Board may adopt regulations governing the provision of additional evidence of financial responsibility*  
 6241 *based upon annual gross revenue of the applicant or his employer's business and an assessment of the*  
 6242 *risks of the applicant or his employer's business to persons, property, and the environment. Such*  
 6243 *financial responsibility shall be maintained at not less than such amount at all times during the licensed*  
 6244 *period. The applicant shall notify the Board 10 days prior to any reduction at the request of the*  
 6245 *applicant or cancellation by the insurer.*

6246 *§ 3.2-3928. Licensing of pesticide bulk storage facilities.*

6247 *The Board shall establish by regulation specific requirements for the licensing of a pesticide business*  
 6248 *that mixes, stores, or otherwise handles pesticides in bulk quantities. For the purposes of this section,*  
 6249 *bulk quantity shall not include containers approved for transportation in interstate commerce by the*  
 6250 *U.S. Department of Transportation.*

6251 *Article 3.*

6252 *Pesticide Application and Certification.*

6253 *§ 3.2-3929. Restricted use pesticides prohibited; exceptions; training required.*

6254 *A. No person shall use any pesticide classified for restricted use unless that person: (i) has first*  
 6255 *complied with the certification requirements of the Board; (ii) is under the direct supervision of a*  
 6256 *certified applicator on-site and training for certification as a commercial applicator or registered*  
 6257 *technician; or (iii) is producing an agricultural commodity while under the direct supervision of a*  
 6258 *private applicator on property owned or leased by that private applicator.*

6259 *B. The Board may specify by regulation the amount of training and service required to qualify a*  
 6260 *person for each classification or subclassification of certification as a commercial applicator or*  
 6261 *registered technician.*

6262 *§ 3.2-3930. Application and certification of commercial applicators.*

6263 *A. No person shall use (except under supervised conditions of training for certification) or supervise*  
 6264 *the use of any pesticide in exchange for compensation of any kind other than the trading of personal*  
 6265 *services between producers of agricultural commodities without first obtaining certification as either a*  
 6266 *commercial applicator or registered technician in accordance with regulations adopted by the Board.*  
 6267 *Application for a commercial applicator's or registered technician's certificate shall be made in writing*  
 6268 *to the Commissioner. Each application for a certificate shall contain: (i) information regarding the*  
 6269 *applicant's qualifications and proposed operations; (ii) the classification or classifications the applicant*  
 6270 *is applying for; (iii) the full name of the applicant or, if the applicant is a member of a firm or*

6271 partnership, the names of the principal officers of the association, corporation, or group; (iv) the  
 6272 principal business address of the applicant in the Commonwealth and elsewhere; and (v) any other  
 6273 information required by the Commissioner.

6274 B. The Commissioner shall not issue a commercial applicator's or registered technician's certificate  
 6275 until the individual who uses or supervises the use of any pesticide is certified by: (i) presenting proof  
 6276 of completion of a training course approved by the Board and appropriate to the desired classification;  
 6277 and (ii) passing a written examination.

6278 C. Each commercial applicator and registered technician shall be required to renew his certification  
 6279 biennially subject to payment of the required fee and presentation of proof of completion of a  
 6280 Board-approved recertification course. Reexamination or special examination may be required by the  
 6281 Board of any person: (i) whose certification has been suspended, revoked, or modified pursuant to  
 6282 subsection B of § 3.2-3940; (ii) if significant technological developments have occurred requiring  
 6283 additional knowledge; (iii) when required by additional standards established by the U.S. Environmental  
 6284 Protection Agency; (iv) when applying for a different classification of certification; or (v) when required  
 6285 by regulations of the Board. In the event that reexamination is required, the fee shall be no greater than  
 6286 that imposed for initial certification.

6287 D. The Commissioner shall issue a certificate for classifications for which the applicant is qualified  
 6288 if he finds the applicant meets the requirements to apply pesticides in any of the classifications he has  
 6289 applied for; and, if the applicant is applying for a certificate to engage in aerial application, has met  
 6290 all of the requirements of the Federal Aviation Agency, the Department of Aviation of the  
 6291 Commonwealth, and any other applicable laws. The Commissioner may limit the certification of the  
 6292 applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the  
 6293 applicant is only so qualified. If a certificate is not issued as applied for, the Commissioner shall inform  
 6294 the applicant in writing of the reasons within 30 days. Copies of such action shall be reported to the  
 6295 Board.

6296 § 3.2-3931. Agencies or persons exempt or partially exempt.

6297 A. All state agencies, municipal corporations, or other governmental agencies shall be exempt from  
 6298 any certification fees prescribed by this article, but remain subject to the provisions of this article and  
 6299 regulations adopted hereunder concerning the application of pesticides.

6300 B. Individuals, employees, or representatives of such governmental agencies shall be certified as  
 6301 commercial applicators or registered technicians for the use of pesticides covered by the applicant's  
 6302 certification. The certification shall be valid only when applying or supervising application of pesticides  
 6303 used by such governmental agencies.

6304 C. The following persons shall be exempt from the provisions of this article: (i) persons conducting  
 6305 laboratory research involving restricted use pesticides; (ii) doctors of medicine or doctors of veterinary  
 6306 medicine applying pesticides as drugs or medication, or to control pests in corpses during the normal  
 6307 course of their practice; (iii) providers of janitorial, cleaning, or sanitizing services if the providers use  
 6308 no pesticides other than nonrestricted use sanitizers, disinfectants, and germicides; (iv) persons who  
 6309 apply paints containing pesticides, provided that the pesticides in the paints are not restricted use  
 6310 pesticides; (v) classes of persons specified by regulation who can use or supervise the use of pesticides  
 6311 with minimal risk to the public health and safety by virtue of their experience and knowledge regarding  
 6312 the safe use of pesticides; and (vi) classes of persons specified by regulation whose use or supervision  
 6313 of the use of pesticides can be accomplished with minimal risk to the public health and safety by virtue  
 6314 of the nature of the pesticides used or method of application of the pesticides.

6315 D. A painter who applies restricted-use marine antifoulant paint only under the direct, on-site  
 6316 supervision of a commercial applicator is not required to be a commercial applicator or a registered  
 6317 technician, provided that one commercial applicator may not provide on-site supervision for more than  
 6318 eight paint applicators.

6319 E. Neither the provisions of this chapter nor regulations adopted hereunder shall require the  
 6320 certification of any person who uses or supervises the use of any pesticide that is not a restricted use  
 6321 pesticide only on property owned or leased by his employer as part of his job duties. This exemption  
 6322 shall not apply to any person who: (i) uses or supervises the use of any pesticide on any area open to  
 6323 the general public at educational institutions, health care facilities, day-care facilities, or convalescent  
 6324 facilities; (ii) uses or supervises the use of any pesticide within any area where open food is stored,  
 6325 processed, or sold; (iii) uses or supervises the use of any pesticide on any recreational land over five  
 6326 acres in size; and (iv) is otherwise specifically required by this article to be certified as a commercial  
 6327 applicator.

6328 § 3.2-3932. Application and certification of private applicators.

6329 A. It is unlawful to use or supervise the use of any pesticide classified for restricted use on any  
 6330 property, unless the applicator: (i) has first obtained certification from the Commissioner as a private  
 6331 applicator; (ii) is exempt or excepted from the requirement to be certified; or (iii) is producing an

6332 agricultural commodity while under the direct supervision of a private applicator on property owned or  
 6333 leased by that private applicator.

6334 B. An applicator shall be required to renew his certification biennially under the classification or  
 6335 subclassification for which such applicator is certified. The Commissioner shall require reexamination or  
 6336 special examination of any applicator if: (i) certification has been suspended, revoked, or modified  
 6337 pursuant to § 3.2-3940; (ii) significant technological developments have occurred requiring additional  
 6338 knowledge; (iii) required by additional standards established by the U.S. Environmental Protection  
 6339 Agency; or (iv) required by regulations of the Board. To obtain recertification, the applicator shall  
 6340 furnish satisfactory evidence of completion of educational courses, programs, or seminars approved by  
 6341 the Board.

6342 C. The Commissioner shall inform the applicant in writing of his decision within 30 days.

6343 § 3.2-3933. Certificate renewals; late fee for delinquent renewals; reexamination.

6344 A. If the application for renewal of any certificate provided for in this article is not filed prior to a  
 6345 date established by the Board, then a late fee of 20 percent shall be added to the renewal fee and paid  
 6346 by the applicant before renewal. If the certificate is not renewed within 60 days following the expiration  
 6347 of the certificate, then the applicant must take another examination.

6348 B. The Board may provide by regulation for the biennial payment of commercial applicator and  
 6349 registered technician certificate renewal fees.

6350 § 3.2-3934. Reciprocal agreement.

6351 The Commissioner may issue a certificate on a reciprocal basis to a nonresident who is licensed or  
 6352 certified in another state or by a federal agency substantially in accordance with the provisions of this  
 6353 chapter. Such a certificate may be suspended or revoked as other certifications issued hereunder, and  
 6354 may be suspended or revoked if the nonresident's base state or federal certification is suspended or  
 6355 revoked.

6356

#### Article 4.

#### Marine Antifoulant Paints.

6357 § 3.2-3935. Definitions.

6358 As used in this article, unless the context requires otherwise:

6359 "Acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square  
 6360 centimeter per day at steady state conditions as determined in accordance with a U.S. Environmental  
 6361 Protection Agency (EPA) testing procedure as outlined in the EPA data call-in notice of July 29, 1986,  
 6362 on tributyltin in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, (7  
 6363 U.S.C. § 136 et seq.); or a lower release rate if adopted by the Board as necessary to protect health or  
 6364 the environment.

6365 "Commercial boat yard" means any facility that engages for hire in the construction, storage,  
 6366 maintenance, repair or refurbishing of vessels (other than seaplanes) or any licensed independent  
 6367 marine maintenance contractor who engages in such activities.

6368 "Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the  
 6369 purpose of controlling freshwater or marine fouling organisms on vessels.

6370 "Tributyltin compounds" means any compound having three normal butyl groups attached to a tin  
 6371 atom and with or without an anion such as chloride, fluoride or oxide.

6372 "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used  
 6373 as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and  
 6374 tugs.

6375 § 3.2-3936. Sale and application of tributyltin compounds.

6376 A. Except as otherwise provided in this section, it is unlawful to distribute, possess, sell or offer for  
 6377 sale, apply or offer for use or application any marine antifoulant paint containing tributyltin  
 6378 compounds. Authorized personnel of the Department of Game and Inland Fisheries, Virginia Marine  
 6379 Resources Commission, or the Department may seize any antifoulant paint held in violation of this  
 6380 article and any seized substances shall be considered forfeited.

6381 B. A person may distribute or sell a marine antifoulant paint containing tributyltin with an  
 6382 acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a  
 6383 commercial boat yard may possess, apply, or purchase an antifoulant paint containing tributyltin with  
 6384 an acceptable release rate. Such paint may be applied only within a commercial boat yard and only to  
 6385 vessels that exceed 25 meters (82.02 feet) in length or that have aluminum hulls.

6386 C. A person may distribute, sell or apply a marine antifoulant paint containing tributyltin with an  
 6387 acceptable release rate if: (i) the paint is distributed or sold in a spray can in a quantity of 16 ounces  
 6388 avoirdupois weight or less; and (ii) is commonly referred to as outboard or lower unit paint.

6389 § 3.2-3937. Educational programs.

6390 The State Water Control Board, the Board of Game and Inland Fisheries, the Virginia Marine  
 6391 Resources Commission, the Virginia Institute of Marine Science, and the Department shall through  
 6392 cooperative programs develop and implement a program to inform interstate and intrastate paint  
 6393



6394 *manufacturers and distributors, vessel owners, and commercial boat yards of the properties of tributyltin*  
 6395 *in marine antifoulant paints and the law to restrict its use.*

6396 *Article 5.*

6397 *Violations, Penalties, and Proceedings in Case of Violations.*

6398 *§ 3.2-3938. Misbranded pesticides.*

6399 *Any pesticide or device is misbranded if:*

6400 *1. Its labeling bears any statement, design, or graphic representation relative thereto or to its*  
 6401 *ingredients that is false or misleading in any particular;*

6402 *2. It is an imitation of or is offered for sale under the name of another pesticide;*

6403 *3. Its labeling bears any reference to registration under this chapter;*

6404 *4. The accompanying labeling does not contain directions for use that are adequate for the*  
 6405 *protection of the public;*

6406 *5. The label does not contain a warning or caution statement that may be necessary and, if complied*  
 6407 *with, adequate to prevent injury to man, other vertebrate animals, vegetation, and useful invertebrate*  
 6408 *animals;*

6409 *6. The label does not bear an ingredient statement or guaranteed analysis statement on the*  
 6410 *immediate container of the retail package (and on the outside container or wrapper if such statement on*  
 6411 *the immediate container cannot be clearly read) that is presented or displayed under customary*  
 6412 *conditions of purchase. The Commissioner may permit the ingredient statement to appear prominently*  
 6413 *on some other part of the container if the size or form of the container makes it impracticable to place*  
 6414 *it on the part of the retail package that is presented or displayed under customary conditions of*  
 6415 *purchase;*

6416 *7. Any words, statement, or other information required under this chapter to appear on the labeling*  
 6417 *is not prominently placed thereon with such conspicuousness (as compared with other words, statements,*  
 6418 *designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and*  
 6419 *understood by the ordinary individual under customary conditions of purchase and use;*

6420 *8. In the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with*  
 6421 *commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or*  
 6422 *vegetation to which it is applied, or to the person applying such pesticide, excepting pests and weeds;*  
 6423 *or*

6424 *9. In the case of a plant regulator, defoliant, or desiccant, when used as directed it shall be*  
 6425 *injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the*  
 6426 *person applying such pesticide; provided that physical or physiological effects on plants or parts thereof*  
 6427 *shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or*  
 6428 *desiccant was applied, in accordance with the label claims and recommendations.*

6429 *§ 3.2-3939. Violations generally.*

6430 *A. It is unlawful for any person to manufacture, distribute, sell, offer for sale, use or offer for use:*

6431 *1. Any pesticide not registered pursuant to the provisions of this chapter; any pesticide if any of the*  
 6432 *claims made for it or any of the directions for its use differ in substance from the representations made*  
 6433 *in connection with its registration; or any pesticide if the composition of a pesticide differs from its*  
 6434 *composition as represented in connection with its registration.*

6435 *2. Any pesticide sold, offered for sale, or offered for use that is not in the registrant's or the*  
 6436 *manufacturer's unbroken container, and does not have an affixed and visible label bearing the following*  
 6437 *information:*

6438 *a. The name and address of the manufacturer, registrant, or person for whom manufactured;*

6439 *b. The name, brand, or trademark under which said pesticide is sold; and*

6440 *c. The net weight or measure of the content, subject to reasonable variations as permitted by the*  
 6441 *Commissioner.*

6442 *3. Any pesticide containing any substance in quantities highly toxic to man, unless the label bears:*

6443 *a. A skull and crossbones;*

6444 *b. The word "poison" shown prominently in red on a background of distinctly contrasting color; and*

6445 *c. A statement of an antidote for the pesticide.*

6446 *4. The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate,*  
 6447 *magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium*  
 6448 *fluosilicate, unless they have been distinctly colored as provided by regulations issued hereunder. Any*  
 6449 *other white powder pesticide that the Commissioner requires to be distinctly colored after an*  
 6450 *investigation of and after a public hearing on the necessity for such action. The Commissioner may*  
 6451 *exempt any pesticide to the extent that it is intended for a particular use if he determines that distinctive*  
 6452 *coloring is unnecessary for the protection of the public health.*

6453 *5. Any pesticide that is adulterated or misbranded, or any device that is misbranded.*

6454 *6. Any pesticide that is the subject of a stop sale, use, or removal order as provided for in*

6455 § 3.2-3944 until such time as the provisions of that section have been met.

6456 B. It is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent  
6457 with its labeling or regulations of the Board, provided that such deviation may include provisions set  
6458 forth in Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et  
6459 seq.).

6460 C. It is unlawful to dispose of containers or unused portions of pesticide in a manner inconsistent  
6461 with label directions or the regulations of the Board in the absence of label directions, or if those  
6462 regulations further restrict such disposal.

6463 D. It is unlawful for any person to knowingly use any pesticide against any organism that is  
6464 otherwise protected under fish, game, or migratory bird laws, without first obtaining authorization as  
6465 necessary from the federal or state agency responsible for the protection of the organism.

6466 E. It is unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or  
6467 labeling provided for in this chapter or the regulations adopted hereunder.

6468 F. It is unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a  
6469 request in writing specifying the nature or kind of pesticide or device to which such request relates, to  
6470 furnish to or permit any person designated by the Commissioner to have access to and to copy such  
6471 records of business transactions as may be essential in carrying out the purposes of this chapter.

6472 G. It is unlawful for any person to give a guaranty or undertaking provided for in § 3.2-3941 that is  
6473 false in any particular, except that a person who receives and relies upon a guaranty authorized under  
6474 such section may give a guaranty to the same effect, which guaranty shall contain in addition to his  
6475 own name and address the name and address of the person residing in the U.S. from whom he received  
6476 the guaranty or undertaking.

6477 H. It is unlawful for any person to oppose or interfere in any way with the Commissioner in carrying  
6478 out the duties imposed by this chapter.

6479 § 3.2-3940. Administrative violations.

6480 A. In addition to imposing civil penalties and referring violations for criminal prosecution, the Board  
6481 may deny, suspend, modify, or revoke a license after providing an opportunity for a hearing if it finds  
6482 that the applicant, licensee, or his employee has committed any of the following violations:

6483 1. Made false or fraudulent claims through any media misrepresenting the effect of materials or  
6484 methods;

6485 2. Made a pesticide recommendation inconsistent with the label registered pursuant to this chapter,  
6486 provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal  
6487 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.);

6488 3. Acted as a pesticide business with negligence, incompetence, or misconduct;

6489 4. Made false or fraudulent records, invoices, or reports;

6490 5. Failed to submit records required by the Board;

6491 6. Used fraud, misrepresentation, or false information in an application for a license or a renewal of  
6492 a license; or in selling or offering to sell pesticides;

6493 7. Stored or disposed of containers or pesticides by means other than those prescribed on the label  
6494 or by regulation;

6495 8. Provided or made available any restricted use pesticide to any person not certified to apply such  
6496 product;

6497 9. Failed to notify the Department of a reportable pesticide spill, accident, or incident;

6498 10. Acted as a pesticide business without first obtaining the pesticide business license required in  
6499 § 3.2-3924; or

6500 11. Failed to pay any civil penalty assessed by the Board.

6501 B. After opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of  
6502 any certificate if it finds that the applicant or the holder of a certificate has:

6503 1. Made claims through any media that intentionally misrepresent the effects on the environment  
6504 likely to result from the application of a pesticide;

6505 2. Used or caused to be used any pesticide inconsistent with: (i) the label registered by the U.S.  
6506 Environmental Protection Agency; (ii) a Virginia state registered use; or (iii) other permissible uses;

6507 3. Applied any pesticide in a negligent manner;

6508 4. Failed to comply with the provisions of Article 3, regulations adopted hereunder, or of any lawful  
6509 order of the Commissioner or the Board;

6510 5. Failed to: (i) keep and maintain required records or reports; or (ii) furnish or permit access to  
6511 any such records or reports for copying by the Commissioner;

6512 6. Made false or fraudulent records, invoices, or reports concerning the use or application of any  
6513 pesticide;

6514 7. Used or caused to be used any pesticide classified for restricted use unless under the direct  
6515 supervision of a certified applicator;

6516 8. Used fraud or misrepresentation in applying for a certificate or renewal of a certificate;

- 6517 9. Failed to comply with any limitations or restrictions on a certification;  
6518 10. Aided, abetted, or conspired with any person to violate the provisions of Article 3;  
6519 11. Impersonated any federal, state, or local official;  
6520 12. Made any statement, declaration, or representation implying that any person certified or  
6521 registered under the provisions of Article 3 is recommended or endorsed by any agency of the  
6522 Commonwealth; or  
6523 13. Been convicted or is subject to a final order assessing a penalty pursuant to § 14 (a) or (b) of  
6524 the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.).  
6525 C. The Commissioner may, without a hearing, suspend the license of any person licensed or certified  
6526 simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger  
6527 to the public health, safety, or the environment. The hearing shall be scheduled within a reasonable time  
6528 of the date of the summary suspension.  
6529 D. Any licensee or certificate holder whose license or certificate has been suspended shall not  
6530 engage in the activity for which he has been certified or licensed pending the hearing.  
6531 E. The Board shall suspend a license or certificate if a civil penalty is not paid within 60 days or a  
6532 challenge is not made pursuant to subsection D of § 3.2-3943. When deciding whether to deny, suspend,  
6533 revoke, or modify any certificate or license, the Board shall give due consideration to: (i) the history of  
6534 previous violations; (ii) the seriousness of the violation including any irreparable harm to the  
6535 environment and any hazards to the health and safety of the public; and (iii) the demonstrated good  
6536 faith in attempting to achieve compliance with the chapter after notification of the violation.  
6537 § 3.2-3941. Exemptions from penalties.  
6538 The penalties provided for violations of subsection A of § 3.2-3939 and § 3.2-3940 shall not apply  
6539 to:  
6540 1. Any carrier transporting pesticides if such carrier permits the Commissioner to copy all records  
6541 showing the transactions in and movements of the pesticides upon request;  
6542 2. Public officials of the Commonwealth and the federal government engaged in the performance of  
6543 their official duties;  
6544 3. Individuals or agencies authorized by law to conduct research in the field of pesticides when such  
6545 research is conducted in accordance with regulations established by the Board; and  
6546 4. Any person who establishes a guaranty signed by, and containing the name and address of, the  
6547 registrant or person residing in the United States from whom he purchased and received in good faith  
6548 the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the  
6549 time of sale and delivery to him, and that it complies with the other requirements of this chapter,  
6550 designating this chapter. In such case the guarantor shall be subject to the penalties that would  
6551 otherwise attach to the person holding the guaranty under the provisions of this chapter.  
6552 § 3.2-3942. Right of entry; warrant requirements; procedure.  
6553 A. The Commissioner may enter any public or private premises operating as a pesticide business at  
6554 reasonable times, with the consent of the owner or tenant thereof, and upon presentation of appropriate  
6555 credentials for carrying out the purposes of this chapter.  
6556 B. If the Commissioner is denied access, he may apply for an administrative search warrant from a  
6557 judge with authority to issue criminal warrants or a magistrate whose jurisdiction encompasses the  
6558 premises.  
6559 1. No warrant shall be issued except upon probable cause and supported by an affidavit particularly  
6560 describing: (i) the place, things, or persons to be inspected or tested; and (ii) the purpose for which the  
6561 inspection, testing, or collection of samples is to be made.  
6562 2. Probable cause shall exist if either: (i) reasonable legislative or administrative standards for  
6563 conducting inspection, testing, or collection of samples are satisfied with respect to the particular place,  
6564 thing, or person; or (ii) there is cause to believe that a condition, object, activity, or circumstance  
6565 legally justifies the inspection, testing, or collection of samples.  
6566 3. The supporting affidavit shall contain either: (i) a statement that consent to inspect, test, or collect  
6567 samples has been sought and refused; or (ii) facts or circumstances reasonably justifying the failure to  
6568 seek consent. If probable cause is based upon legislative or administrative standards for selecting places  
6569 of business for inspection, the affidavit shall contain factual allegations sufficient to justify an  
6570 independent determination by the court that the inspection program is based on reasonable standards  
6571 and that the standards are being applied to a particular place of business in a neutral and fair manner.  
6572 C. Any administrative search warrant shall be effective for a period of not more than 15 days unless  
6573 extended or renewed by the judicial officer who issued the original warrant. The warrant shall be  
6574 executed and returned to the issuing officer within the time specified or within the extended or renewed  
6575 time. The return shall list any records removed or samples taken pursuant to the warrant. The warrant  
6576 shall be void after the expiration of time unless executed or renewed.  
6577 D. No warrant shall be executed in the absence of the owner, tenant, operator, or custodian of the

6578 premises unless the issuing judicial officer specifically authorizes that such authority is reasonably  
6579 necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be  
6580 made forcibly. The issuing officer may authorize a forcible entry where the facts: (i) create a reasonable  
6581 suspicion of an immediate threat to the health and safety of persons or to the environment; or (ii)  
6582 establish that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry  
6583 is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer  
6584 who shall accompany the Commissioner during the execution of the warrant.

6585 E. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to  
6586 its return to the issuing judicial officer, except as a defense in a contempt proceeding or if the owner or  
6587 custodian of the place to be inspected submits a substantial preliminary showing by affidavit and  
6588 accompanied by proof that: (i) a statement included by the affiant in his affidavit for the administrative  
6589 search warrant was false and made knowingly and intentionally or with reckless disregard for the truth;  
6590 and (ii) the false statement was necessary to the finding of probable cause. The court may conduct in  
6591 camera review as appropriate.

6592 F. After the warrant has been executed and returned to the issuing judicial officer, the validity of the  
6593 warrant may be reviewed either as a defense to any Notice of Violation or by declaratory judgment  
6594 action brought in a circuit court. The review shall be confined to the face of the warrant, affidavits, and  
6595 supporting materials presented to the issuing judicial officer. If the owner or custodian of the place  
6596 inspected submits a substantial showing by affidavit and accompanied by proof that: (i) a statement  
6597 included in the warrant was false and made knowingly and intentionally or with reckless disregard for  
6598 the truth; and (ii) the false statement was necessary to the finding of probable cause, the reviewing  
6599 court shall limit its inquiry to whether there is substantial evidence in the record supporting the  
6600 issuance of the warrant and shall not conduct a de novo determination of probable cause.

6601 § 3.2-3943. Civil penalties; procedure.

6602 A. Any person violating this chapter or regulations adopted hereunder may be assessed a civil  
6603 penalty by the Board. In determining the amount of any civil penalty, the Board shall give due  
6604 consideration to: (i) the history of previous violations; (ii) the seriousness of the violation including any  
6605 irreparable harm to the environment and any hazards to the health and safety of the public; and (iii)  
6606 the demonstrated good faith in attempting to achieve compliance with the chapter after notification of  
6607 the violation.

6608 B. The Board may assess a penalty of not more than \$1,000 for a violation that is less than serious;  
6609 not more than \$5,000 for a serious violation; and not more than \$20,000 for a repeat or knowing  
6610 violation. The Board may assess an additional penalty of up to \$100,000 for any violation that causes  
6611 serious damage to the environment, serious injury to property, or serious injury to or death of any  
6612 person.

6613 C. Civil penalties assessed under this section shall be paid into Pesticide Control Fund established  
6614 in § 3.2-3912. The Commissioner shall prescribe procedures for payment of penalties that are not  
6615 contested by licensees or persons, including provisions for a person to consent to abatement of the  
6616 alleged violation and payment of a penalty or negotiated sum in lieu of such penalty without admission  
6617 of civil liability.

6618 D. The person to whom a civil penalty is issued shall have 15 days to request an informal  
6619 fact-finding conference, held pursuant to § 2.2-4019, to challenge the fact or amount of the civil penalty.  
6620 If the civil penalty is upheld, such person shall have 15 days to: (i) pay the proposed penalty in full or  
6621 contest either the amount of the penalty or the fact of the violation; and (ii) forward the proposed  
6622 amount to the Commissioner's office for placement in an interest-bearing trust account in the State  
6623 Treasurer's office. If administrative or judicial review shows no violation or that the amount of penalty  
6624 should be reduced, the Commissioner shall have 30 days from that showing to remit the appropriate  
6625 amount to the person, with interest accrued thereon. If the violation is upheld, the amount collected  
6626 shall be paid into the Pesticide Control Fund.

6627 E. Final orders of the Board may be recorded, enforced, and satisfied as orders or decrees of a  
6628 circuit court upon certification by the secretary of the Board. Such orders may be appealed in  
6629 accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

6630 § 3.2-3944. "Stop-sale or removal" orders; "stop-use" orders; judicial review.

6631 A. When the Commissioner has reason to believe that a pesticide is being offered for sale or use or  
6632 is being used in violation of any of the provisions of this chapter, he shall issue and enforce a written  
6633 or printed "stop sale or removal" order. The order shall be directed to the owner or custodian of the lot  
6634 of pesticide and shall require him to hold the pesticide at a designated place until this chapter has been  
6635 complied with and the pesticide is released in writing by the Commissioner or the violation is otherwise  
6636 legally disposed of by written authority. The owner or custodian of such pesticide shall have the right to  
6637 administrative and judicial review of such order in accordance with the provisions of the Administrative  
6638 Process Act (§ 2.2-4000 et seq.). The provisions of this section shall not be construed as limiting the  
6639 right of the enforcement officer to proceed as authorized by other provisions of this chapter. The

6640 Commissioner shall release the pesticide when the requirements of the provisions of this chapter have  
 6641 been complied with and upon payment of all costs and expenses incurred in connection with the  
 6642 withdrawal.

6643 B. When the Commissioner has reason to believe that any pesticide is being offered for sale or use  
 6644 or is being used in violation of any of the provisions of this chapter by a person, he shall issue and  
 6645 enforce a written or printed "stop-use" order until the Pesticide Control Act has been complied with or  
 6646 the violation has been otherwise legally disposed of by written authority. The person shall have the right  
 6647 to administrative and judicial review of such order in accordance with the provisions of the  
 6648 Administrative Process Act (§ 2.2-4000 et seq.). The provisions of this section shall not be construed as  
 6649 limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

6650 § 3.2-3945. Seizure, condemnation, and sale.

6651 Any lot of pesticide in violation of this chapter shall be subject to seizure on complaint of the  
 6652 Commissioner to the circuit court in the area where the pesticide is located. If the court finds the  
 6653 pesticide to be in violation of this chapter and orders its condemnation, it shall be disposed of after the  
 6654 claimant is provided an opportunity to apply for the release of the pesticide or for permission to  
 6655 process, relabel, or otherwise bring it into compliance with this chapter.

6656 § 3.2-3946. Proceedings in case of violations.

6657 A. If the examination of laboratory results or other evidence collected during an investigation  
 6658 appears to show a violation of this chapter or any of the regulations issued hereunder, the  
 6659 Commissioner may provide notice of the violation to the registrant, distributor, possessor, licensee,  
 6660 applicator, or other person from whom such evidence was taken. Any party so notified shall be given an  
 6661 opportunity to be heard in accordance with regulations adopted by the Board. If the hearing appears to  
 6662 show a violation of this chapter or the regulations issued hereunder, the Commissioner may certify the  
 6663 facts to the Board or the proper prosecuting attorney and furnish the Board or that officer with a copy  
 6664 of the results of the investigation.

6665 B. It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall  
 6666 report any violation of this chapter to cause proceedings to be prosecuted without delay.

6667 C. Nothing in this chapter shall be construed as requiring the Commissioner to report for the  
 6668 institution of proceedings under this chapter, minor violations of this chapter, whenever the  
 6669 Commissioner believes that the public interest will be adequately served in the circumstances by a  
 6670 suitable written notice or warning. Copies of such warnings shall be reported to the Board.

6671 § 3.2-3947. Penalties.

6672 A. Except as otherwise provided, any person who knowingly violates any provisions of this chapter  
 6673 or regulations adopted hereunder is guilty of a Class 1 misdemeanor and shall be subject to an  
 6674 additional fine of up to \$500,000 if death or serious physical harm to any person is caused by the  
 6675 violation.

6676 B. The Commissioner may bring an action to enjoin the violation or threatened violation of this  
 6677 chapter or any regulation adopted hereunder in the circuit court of the county or city where the  
 6678 violation occurs or is about to occur, or in the Circuit Court of the City of Richmond if the violation  
 6679 may affect more than one county or city. The Commissioner may request either the attorney for the  
 6680 Commonwealth or the Attorney General to bring action under this section, when appropriate.

#### 6681 CHAPTER 40.

#### 6682 SEEDS.

#### 6683 Article 1.

#### 6684 Seeds.

6685 § 3.2-4000. Definitions.

6686 As used in this chapter, unless the context requires another meaning:

6687 "Advertisement" means any representation relating to seed within the scope of this article that is not  
 6688 also required labeling.

6689 "Agricultural seed" means seeds of grass, forage, cereal, and fiber crops; any other seed commonly  
 6690 recognized as agricultural seed; and any lawn seed, turf seed, and mixtures thereof (including any  
 6691 noxious-weed seeds that may be present).

6692 "Bag" or "packet" means a container in the form of a sack or pouch.

6693 "Blend" means a mechanical combination of varieties of the same kind that is identified by a blend  
 6694 designation and is always present in the same percentages in each lot so designated.

6695 "Brand" means the name, term, design, or trademark of seed offered for sale.

6696 "Bulk" or "in bulk" means loose seed in bins or other containers, but not bags or packets. "Certified  
 6697 seed," "registered seed," or "foundation seed" means seed produced and labeled in compliance with the  
 6698 procedures and requirements of an official certifying agency of a state, the United States, a province of  
 6699 Canada, or the government of a foreign country where the seed was produced.

6700 "Code designation" means an identification assigned by the U.S. Department of Agriculture.

- 6701 *"Conditioning" means any process of cleaning, scarifying, treating, or blending seed that changes the*  
6702 *purity or germination of the seed.*
- 6703 *"Controlled conditions" means minimum seed stock standards established by regulation.*
- 6704 *"Distribute" means to import, consign, produce, mix, blend, condition, sell, offer for sale, barter,*  
6705 *warehouse, or supply seeds in the Commonwealth.*
- 6706 *"Dormant seed" means viable seed other than hard seed that fails to germinate when provided the*  
6707 *specified germination conditions.*
- 6708 *"Flower seed" means any seeds of herbaceous plants grown for their blooms, ornamental foliage, or*  
6709 *other ornamental parts; any other seeds commonly recognized as flower seeds; and any seeds*  
6710 *designated as flower seeds by regulations.*
- 6711 *"Germination" means the percentage, by count, of seeds under consideration capable of producing*  
6712 *normal seedlings in a given period of time and under conditions specified by regulations.*
- 6713 *"Guarantor" means the person whose name appears on the label.*
- 6714 *"Hard seed" means seeds that do not absorb moisture and germinate, thus remaining hard during*  
6715 *the period prescribed for germination by regulations.*
- 6716 *"Hybrid" means the first generation seed of a cross produced by controlling pollination or using*  
6717 *sterile lines and combining: (i) two, three, or four inbred lines; (ii) one inbred line, or a single cross,*  
6718 *with an open-pollinated variety; or (iii) two varieties or species, except open-pollinated varieties of*  
6719 *corn.*
- 6720 *"Inbred line" means a relatively stable and pure breeding strain resulting from: (i) four or more*  
6721 *successive generations of controlled self-pollination; or (ii) four successive generations of backcrossing*  
6722 *male sterile lines.*
- 6723 *"Inert matter" means all matter not seeds and includes broken seeds, sterile florets, chaff, fungus*  
6724 *bodies, and stones as determined by methods prescribed by regulations.*
- 6725 *"Kind" means related species or subspecies known by a common name including wheat, oats, hairy*  
6726 *vetch, white sweet clover, cabbage, and cauliflower.*
- 6727 *"Labeling" means all labels, tags, and any other written, printed, or graphic statements or*  
6728 *representations (including representations on invoices) in any form pertaining to any seed.*
- 6729 *"Lawn and turf seed" means seeds of grasses commonly recognized and sold for lawns or other*  
6730 *areas where turf is grown for beautification or erosion control.*
- 6731 *"Lawn or turf seed mixture" means two or more kinds of agricultural seeds that are combined and*  
6732 *sold for lawns or other areas where turf is grown for beautification or erosion control.*
- 6733 *"Lot" means a definite quantity of seed that is identified by a number or other identification and is*  
6734 *uniform throughout for the factors appearing on the label.*
- 6735 *"Mixture" means seeds consisting of more than one kind or variety, when claimed or present, in*  
6736 *excess of five percent of the whole.*
- 6737 *"Name of mixture" means the name or term designating a specific lawn or turf seed mixture.*
- 6738 *"Noxious-weed seed" means prohibited noxious-weed seeds and restricted noxious weed seeds.*
- 6739 *"Origin" means the state, territory, foreign country, or designated portion thereof, where the seed*  
6740 *was grown.*
- 6741 *"Prohibited noxious-weed seed" means seeds of weeds that are highly destructive and not*  
6742 *controllable by common practices.*
- 6743 *"Pure seed" means agricultural or vegetable seed exclusive of inert matter and other seeds*  
6744 *distinguishable from the kind, or kind and variety, being considered. Pure seed shall be determined by*  
6745 *methods prescribed by regulations.*
- 6746 *"Quantity statement" means the net weight (mass), net volume (liquid or dry), count, or other form of*  
6747 *measurement of a commodity.*
- 6748 *"Recognized variety name" and "recognized hybrid designation" mean the name or designation first*  
6749 *assigned to the variety or hybrid by the person who developed and introduced it for production or sale.*
- 6750 *"Registrant" means the person registering a lawn or turf seed mixture pursuant to this article.*
- 6751 *"Restricted noxious-weed seed" means weed seeds that are very objectionable in fields, lawns, and*  
6752 *gardens and are difficult to control by common practices.*
- 6753 *"Sale" means the transfer of ownership of seed as evidenced by the exchange of payment or seed, in*  
6754 *whole or in part.*
- 6755 *"Screenings" means seed, inert matter, and other materials removed from agricultural seed or*  
6756 *vegetable seed by cleaning or conditioning.*
- 6757 *"Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling,*  
6758 *relocating, using, or disposing of seed until the Commissioner or the court gives written permission.*
- 6759 *"Tolerance" means the allowable deviation from any figure used on a label to designate the*  
6760 *percentage of any fraction or rate of occurrence in the lot and is based on the law of normal variation*  
6761 *from a mean.*
- 6762 *"Transgenetic" means any plant material or seed that has undergone the transfer of a gene from one*

6763 *genera to another.*

6764 *"Treated" means seed that has received an effective application of: (i) a generally approved*  
6765 *substance; (ii) a process designed to control or repel certain disease organisms, insects, or other pests;*  
6766 *or (iii) any other treatment to improve its planting value.*

6767 *"Tree and shrub seed" means seeds of woody plants commonly recognized as trees and shrubs and*  
6768 *designated by regulations.*

6769 *"Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other*  
6770 *characteristics that distinguish it from other plants of the same kind.*

6771 *"Vegetable seed" means seeds of crops grown in gardens and on truck farms commonly recognized*  
6772 *as vegetable seed and designated by regulations.*

6773 *"Weed seed" means seeds, bulblets, or tubers of plants commonly recognized as weeds, including*  
6774 *noxious-weed seeds.*

6775 *§ 3.2-4001. Authority of Board to adopt regulations.*

6776 *The Board may adopt regulations:*

6777 *1. Governing: (i) methods of sampling; (ii) methods of inspection; (iii) methods of testing in the*  
6778 *laboratory and in the field; (iv) the establishment of standards; (v) the establishment of code*  
6779 *designations; and (vi) the establishment of tolerances for agricultural, vegetable, flower, tree and shrub,*  
6780 *lawn and turf seeds, mixtures of such seeds, and screenings;*

6781 *2. Providing a list of prohibited and restricted noxious-weed seeds;*

6782 *3. Providing for the labeling of flower seeds by kind, variety, type, or performance characteristics as*  
6783 *required by § 3.2-4008;*

6784 *4. Providing a list of tree and shrub seeds subject to the seed purity and germination labeling*  
6785 *requirements of subsection I of § 3.2-4008;*

6786 *5. Providing for the registration of the pedigree of any hybrid;*

6787 *6. Providing a list of those kinds of seed that may be sold only by variety name;*

6788 *7. Establishing special labeling requirements, in addition to the requirements of § 3.2-4008, for the*  
6789 *sale or distribution of seeds produced from transgenic plant material;*

6790 *8. Providing a list of second generation hybrids that may be sold as a hybrid;*

6791 *9. Providing a list of seeds specified as lawn and turf seeds; and*

6792 *10. Establishing tolerances that recognize variations between analyses, tests, label statements, and*  
6793 *subsequent analyses to be used in enforcement.*

6794 *§ 3.2-4002. Authority of Commissioner to adopt regulations.*

6795 *A. The Commissioner may, by regulation: (i) adopt the Rules for Testing Seeds established by the*  
6796 *Association of Official Seed Analysts; (ii) amend the standards for seed; (iii) amend the prohibited*  
6797 *noxious-weed seed list; and (iv) amend the restricted noxious-weed seed list.*

6798 *B. Such regulations shall be effective upon filing with the Registrar of Regulations, who shall publish*  
6799 *the regulations as a final regulation in the Virginia Register of Regulations with a preamble stating that*  
6800 *the Board will receive, consider, and respond to petitions by any interested person at any time with*  
6801 *respect to reconsideration or revision of such regulation.*

6802 *C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise*  
6803 *the regulation adopted by the Commissioner. The revised regulation shall be effective upon filing with*  
6804 *the Registrar of Regulations, who shall publish the regulation as final regulation in the Virginia*  
6805 *Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor*  
6806 *public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or*  
6807 *revision of any regulation adopted pursuant to this section.*

6808 *§ 3.2-4003. Powers and duties of the Commissioner.*

6809 *The Commissioner may:*

6810 *1. Establish and maintain seed-testing facilities;*

6811 *2. Fix and collect fees for testing seeds for farmers and dealers that have requested the tests;*

6812 *3. Establish and maintain facilities for the verification of kind and variety;*

6813 *4. Publish the results of analyses, tests, examinations, studies, and investigations authorized by this*  
6814 *article together with any other information he may deem advisable;*

6815 *5. Cooperate with the U.S. Department of Agriculture in seed law enforcement;*

6816 *6. Require the registrant of any variety or hybrid offered for sale to furnish: (i) the recognized*  
6817 *variety name or recognized hybrid designation of such variety or hybrid; (ii) a 1,000 viable seed sample*  
6818 *of such seed; and (iii) the history of its development and the name of the person who developed such*  
6819 *variety or hybrid and first introduced it for production and sale;*

6820 *7. Require the registration annually of all fields planted for the production of hybrid seed on or*  
6821 *before June 20 and provide for inspection of such fields; and*

6822 *8. Appoint a seed advisory committee.*

6823 *§ 3.2-4004. Seed Fund; established.*

6824 *There is hereby created in the state treasury a special nonreverting fund to be known as the Seed*  
 6825 *Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the*  
 6826 *Comptroller. All fees and assessments paid pursuant to this article shall be paid into the state treasury*  
 6827 *and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be*  
 6828 *credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal*  
 6829 *year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be*  
 6830 *used solely for carrying out the purpose of this article, except that the Commissioner shall deposit 50*  
 6831 *percent of the inspection fee to the credit of the Virginia Agricultural Foundation Fund. The Virginia*  
 6832 *Agricultural Council shall administer all funds received from this section for the exclusive funding of*  
 6833 *lawn and turf research.*

6834 *§ 3.2-4005. License required to market seed.*

6835 *A. Any person whose name appears on the label of seed shall obtain a license from the*  
 6836 *Commissioner before distributing, selling, or offering to sell such seed in the Commonwealth. The*  
 6837 *applicant shall submit the application on a form furnished or approved by the Commissioner and shall*  
 6838 *pay a license fee of \$50 at the time of application. Any person who fails to obtain a license prior to*  
 6839 *distributing, selling, or offering to sell seed shall be given a grace period of 15 working days from*  
 6840 *issuance of notification to obtain a license without penalty. Any person who fails to obtain a license by*  
 6841 *the end of the grace period shall pay a late fee of \$50 in addition to the license fee amount. The*  
 6842 *assessment of this late fee shall not prohibit the Commissioner from taking further action.*

6843 *B. Every license shall expire on December 31. If the holder files a renewal application on or before*  
 6844 *December 31, his license shall remain valid through January 31 or until issuance of the renewal*  
 6845 *license, whichever event first occurs.*

6846 *C. The Commissioner shall refuse to issue the license to any person not in compliance with the*  
 6847 *provisions of this article, and shall revoke any license subsequently found not to be in compliance with*  
 6848 *any provision of this article.*

6849 *§ 3.2-4006. Duty to maintain records.*

6850 *Any person who sells, offers for sale, transports, or delivers agricultural or vegetable seed for*  
 6851 *transportation shall keep a complete record of sale, origin, germination, purity, variety, noxious weed*  
 6852 *seeds, and treatment of each lot of agricultural or vegetable seed offered for three years. The*  
 6853 *Commissioner shall have the right to inspect such records.*

6854 *§ 3.2-4007. Guaranty by seller.*

6855 *A. Any person who sells seeds for producing crops shall be bound as guarantor that such seeds are*  
 6856 *true to kind and variety as represented at the time of sale. If such seeds are sold by an agent, the*  
 6857 *principal shall be bound by the representations of the agent with regard to the kind and variety of the*  
 6858 *seed.*

6859 *B. Any person that sells seed for planting in a container that bears printed or written statements*  
 6860 *regarding the kind, variety, or quality of the seeds therein shall be bound as guarantor that such*  
 6861 *statement is accurate unless the seller affirmatively proves the existence of a contrary agreement*  
 6862 *between the parties.*

6863 *§ 3.2-4008. Labeling and advertising requirements.*

6864 *A. All seed sold, offered for sale, transported, or advertised for planting purposes and all screenings*  
 6865 *shall bear or have attached in a conspicuous place a plainly written or printed label in the English*  
 6866 *language that provides the following information without further modification or denial in the labeling*  
 6867 *or advertisement.*

6868 *B. For treated seed:*

6869 *1. A word or statement indicating that the seed has been treated;*

6870 *2. The commonly accepted chemical or generic name of the applied substance or treatment; and*

6871 *3. A caution statement such as "Do not use for food or feed or oil purposes" if any substance in the*  
 6872 *amount present is harmful to human or other vertebrate animals. The caution for mercurials and similar*  
 6873 *toxic substances shall be a poison statement or symbol.*

6874 *C. For agricultural seeds:*

6875 *1. The recognized name of each kind (or kind and variety if that kind has been adopted by the Board*  
 6876 *pursuant to subdivision 6 of § 3.2-4001) of agricultural seed component in excess of five percent of the*  
 6877 *whole and the percentage by weight in order of predominance. Mixtures and agricultural seed may be*  
 6878 *sold by kind name if the seed is not for the production of an agricultural crop and the label clearly*  
 6879 *indicates "NOT FOR AGRICULTURAL PRODUCTION";*

6880 *2. The word "mixture" or "mixed" shall appear conspicuously on the label if the guarantor is*  
 6881 *required to name more than one agricultural seed component;*

6882 *3. The lot number or other lot identification;*

6883 *4. The origin, if known; if not known, that fact shall be stated;*

6884 *5. The percentage by weight of all weed seeds;*

6885 *6. The name and number per ounce, pound, or metric equivalent of each kind of restricted*



- 6886 noxious-weed seed present, subject to subdivision 1e of § 3.2-4015;
- 6887 7. The percentage by weight of agricultural and vegetable seeds other than the kind or kind and
- 6888 variety named on the label. Such information may be designated as "other crop seed," "other variety,"
- 6889 or as both;
- 6890 8. The percentage by weight of inert matter;
- 6891 9. For each named agricultural seed:
- 6892 a. The percentage of germination, exclusive of hard or dormant seed;
- 6893 b. The percentage of any hard or dormant seed;
- 6894 c. The month and year the test was completed to determine such percentages;
- 6895 d. The "total germination and hard seed" may be stated following the information required by
- 6896 subdivisions a and b; and
- 6897 e. The guarantor shall state separately on the label the percent of dormant seed.
- 6898 10. The recognized hybrid designation for all hybrids;
- 6899 11. The quantity statement; and
- 6900 12. The code designation of the person who transports or delivers for transportation said seed in
- 6901 interstate commerce and the name and address of: (i) the person who sells, labels, or offers the seed for
- 6902 sale; or (ii) the person to whom the seed is sold or shipped for resale.
- 6903 D. For vegetable seeds in containers of one half pound or less:
- 6904 1. The name of kind and variety of seed;
- 6905 2. The year packeted or put up, provided that the words "packed for" shall precede the year, or the
- 6906 percentage of germination and the month and year the test was completed to determine such percentage;
- 6907 3. The quantity statement, except as provided by appropriate regulations;
- 6908 4. The name and address of the person who labels, sells, or offers to sell the seed; and
- 6909 5. For the seeds that germinate less than the standard last established by regulations:
- 6910 a. The percentage of germination, exclusive of hard or dormant seed;
- 6911 b. The percentage of any hard or dormant seed;
- 6912 c. The month and year the test was completed to determine the percentages in subdivisions a and b;
- 6913 d. The "total germination and hard seed" may be stated following the information in subdivisions a
- 6914 and b;
- 6915 e. The guarantor shall state separately on the label the percentage of dormant seed; and
- 6916 f. The words "below standard" in not less than eight-point type.
- 6917 E. For vegetable seeds in bulk or in containers of more than one half pound:
- 6918 1. The name of each kind and variety present in excess of five percent of the whole and the
- 6919 percentage by weight of each in order of its predominance;
- 6920 2. The lot number or other lot identification;
- 6921 3. For each named kind and variety:
- 6922 a. The percentage of germination exclusive of hard or dormant seed;
- 6923 b. The percentage of any hard or dormant seed;
- 6924 c. The month and year the test was completed to determine the percentages in subdivisions a and b;
- 6925 d. The "total germination and hard seed" may be stated; and
- 6926 e. The guarantor shall state separately on the label the percent of dormant seed.
- 6927 4. The quantity statement, except when in bulk;
- 6928 5. The name and address of the person who labels, sells, or offers to sell the seed; and
- 6929 6. The labeling requirements of subdivisions 1 through 5 for vegetable seeds sold from open
- 6930 containers shall be deemed to have been met if the seed is weighed from a properly labeled container in
- 6931 the presence of the purchaser.
- 6932 F. Seeds or screenings offered for sale or distribution must be plainly labeled to indicate that such
- 6933 seeds or screenings are not for planting purposes if containing more than: (i) two percent by weight
- 6934 weed seeds; or (ii) prohibited noxious-weed seeds and restricted noxious-weed seeds in excess of the
- 6935 amounts prescribed by regulations.
- 6936 G. For seeds in replanted containers, mats, tapes, or other planting devices:
- 6937 1. For flower seeds:
- 6938 a. The name of the kind and variety or a statement of type and performance characteristics, as
- 6939 prescribed in the regulations adopted pursuant to the provisions of this article;
- 6940 b. The month and year seed was tested or the year the seed was packaged;
- 6941 c. The quantity statement, except as provided by regulations;
- 6942 d. The name and address of the person who labels, sells, or offers to sell seed; and
- 6943 e. Other special labeling requirements as determined by the Board.
- 6944 2. For seeds of those kinds with standard testing procedures that germinate less than the germination
- 6945 standard established by regulations:
- 6946 a. The percentage of germination exclusive of hard seed; and

- 6947 *b. The words "below standard" in not less than eight-point type.*
- 6948 *3. For seeds placed in a germination medium, mat, tape, or other device making it difficult to*
- 6949 *determine the quantity of seed without removal, a statement to indicate the minimum number of seeds in*
- 6950 *the container.*
- 6951 *H. For flower seeds in containers other than packets prepared for use in home flower gardens or*
- 6952 *household plantings and other than preplanted containers, mats, tapes, or other planting devices:*
- 6953 *1. The name of the kind and variety or a statement of type and performance characteristics as*
- 6954 *prescribed in regulations;*
- 6955 *2. The lot number or other lot identification;*
- 6956 *3. The month and year that the seed was tested or the year the seed was packaged;*
- 6957 *4. The quantity statement, except as provided by regulations;*
- 6958 *5. The name and address of the person who labels, sells, or offers to sell the seed; and*
- 6959 *6. For those kinds of seed for which standard testing procedures are prescribed:*
- 6960 *a. The percentage of germination exclusive of hard seed; and*
- 6961 *b. The percentage of any hard or dormant seed.*
- 6962 *1. For tree and shrub seeds:*
- 6963 *1. The accepted common and Latin name of species;*
- 6964 *2. The variety (if applicable);*
- 6965 *3. The quantity statement;*
- 6966 *4. The number;*
- 6967 *5. The year in which seed was collected;*
- 6968 *6. The origin indicating the specific locality where the seed was collected;*
- 6969 *7. The month and year of the date the seed was tested;*
- 6970 *8. The percentage by weight of pure seed;*
- 6971 *9. The percentage by weight of inert matter;*
- 6972 *10. The percentage by weight of other crop seeds;*
- 6973 *11. The percentage of germination exclusive of hard or dormant seed;*
- 6974 *12. The percentage of any hard seeds;*
- 6975 *13. The speed of germination expressed in terms of the number of days the seeds will take to reach*
- 6976 *90 percent of total;*
- 6977 *14. The pregermination treatment used in test;*
- 6978 *15. The total number of seed per pound;*
- 6979 *16. The moisture content; and*
- 6980 *17. The name and address of the person who labels, sells, or offers to sell the seed.*
- 6981 *J. For lawn or turf seed mixtures in prepacked containers of 100 pounds or less the information*
- 6982 *shall include:*
- 6983 *1. The recognized name of each kind or kind and variety of each agricultural seed component in*
- 6984 *excess of five percent of the whole, and the percentage by weight of each in order of its predominance;*
- 6985 *2. The registered name of the mixture;*
- 6986 *3. The lot number or other lot identification;*
- 6987 *4. The percentage by weight of all weed seeds;*
- 6988 *5. The name and number per ounce or per pound of each kind of restricted noxious-weed seeds*
- 6989 *present, subject to subdivision 1e of § 3.2-4015;*
- 6990 *6. The percentage by weight of other agricultural seeds not claimed in the formula;*
- 6991 *7. The percentage by weight of inert matter;*
- 6992 *8. For each named agricultural seed:*
- 6993 *a. The percentage of germination, exclusive of hard seed;*
- 6994 *b. The percentage of any hard seed; and*
- 6995 *c. The month and year the test was completed to determine the percentages in subdivisions a and b;*
- 6996 *provided that the date of the first test of the components may be given for the entire mixture.*
- 6997 *9. The quantity statement; and*
- 6998 *10. The code designation of the person who transports or delivers for transportation the seed and the*
- 6999 *name and address of: (i) the person who sells, labels, or offers to sell the seed; or (ii) the person to*
- 7000 *whom the seed is sold or shipped for resale.*
- 7001 *K. For transgenetic seed, in addition to any other requirements, the guarantor shall label all seed*
- 7002 *produced from transgenetic plant material pursuant to regulation.*
- 7003 *§ 3.2-4009. Lawn and turf seed mixture; registration and labeling.*
- 7004 *A. Any person packing or distributing lawn and turf seed mixture bearing a distinguishing name or*
- 7005 *trademark in prepackaged containers of 100 pounds or less shall register the mixture annually with the*
- 7006 *Commissioner and provide the following information:*
- 7007 *1. The brand name of the lawn and turf seed mixture;*
- 7008 *2. A statement of the specifications of the lawn and turf seed mixture indicating within five percent*

- 7009 *the percentage by weight of each kind of lawn and turf seed in the mixture;*  
7010 *3. A complete copy of all labeling that is to appear on the container;*  
7011 *4. An example of the analysis statement that is to appear on each container of a mixture; and*  
7012 *5. The name and address of the registrant and the name and address of the person whose name will*  
7013 *appear on the label.*  
7014 *B. Every registration shall expire on December 31. If the holder files a renewal application on or*  
7015 *before December 31, his registration shall remain valid through January 31 or until issuance of the*  
7016 *renewal registration, whichever event first occurs.*  
7017 *C. The Commissioner may permit a change in the labeling or specifications of a lawn or turf seed*  
7018 *mixture within a registration period without requiring new registration of the product provided that the*  
7019 *name of the lawn and turf seed mixture and the specifications for the primary ingredients of the mixture*  
7020 *are not changed.*  
7021 *D. The registrant shall pay to the Commissioner an annual registration fee of \$50 for each named*  
7022 *lawn and turf seed mixture in prepacked containers of 100 pounds or less prior to its distribution.*  
7023 *E. The Commissioner shall register the lawn and turf seed mixture if he finds that the components of*  
7024 *the lawn and turf seed mixture are such as to warrant the proposed labeling and other claims for it and*  
7025 *if the labeling and other submitted material comply with the requirements of this article.*  
7026 *F. If the Commissioner finds that the lawn and turf seed mixture does not warrant the proposed*  
7027 *claims made for it or if the mixture and its labeling do not comply with the provisions of this article, he*  
7028 *shall notify the registrant of the manner of noncompliance to afford the registrant an opportunity to*  
7029 *make the necessary corrections.*  
7030 *G. If the Commissioner identifies any unregistered lawn and turf seed mixture during the registration*  
7031 *year, he shall notify the guarantor and grant a grace period of 15 working days from issuance of*  
7032 *notification for the guarantor to register the lawn and turf seed mixture and pay the registration fee*  
7033 *without penalty. Any person required to register a lawn and turf seed mixture who fails to register*  
7034 *within the 15 working day grace period shall pay to the Commissioner a \$50 late fee in addition to the*  
7035 *registration fee. The Commissioner may issue a stop sale, use, removal, or seizure order upon the lawn*  
7036 *and turf seed mixture until its registration is complete.*  
7037 *§ 3.2-4010. Lawn and turf seed; inspection fee.*  
7038 *A. Any person who introduces lawn and turf seed for sale shall pay the Commissioner an annual*  
7039 *inspection fee by January 31 following the year in which the sale occurred. The inspection fee shall be*  
7040 *the greater of \$35 or three-tenths of one percent of the gross sales receipts for lawn and turf seed sold*  
7041 *by that person in the Commonwealth during that year. Generally accepted accounting principles shall*  
7042 *be used to determine the gross sales receipts. The Commissioner may inspect the sales records of the*  
7043 *person required to pay the inspection fee.*  
7044 *B. Any person who fails to pay the inspection fee by January 31 shall be given a grace period of 15*  
7045 *working days from issuance of notification to pay the inspection fee without penalty. Any person who*  
7046 *fails to pay the inspection fee by the fifteenth day of the grace period shall also pay a late fee of 10*  
7047 *percent of the inspection fee due or \$50, whichever is greater. The assessment of the late fee shall not*  
7048 *prohibit the Commissioner from taking further action.*  
7049 *§ 3.2-4011. Inspection.*  
7050 *A. The Commissioner may sample, inspect, analyze, and test seeds transported, sold, or offered for*  
7051 *sale for planting purposes and screenings for any purpose. For these purposes, the Commissioner may*  
7052 *enter: (i) any premises during business hours; and (ii) any truck or other conveyor by land, by water,*  
7053 *or by air at any time when such conveyor is accessible, to access seeds, mixtures of seeds, screenings,*  
7054 *and the records required to be kept under § 3.2-4006.*  
7055 *B. The Commissioner shall promptly notify the person who transported, sold, or offered the seed or*  
7056 *screenings for sale, or who otherwise violated this article.*  
7057 *§ 3.2-4012. Stop sale order.*  
7058 *The Commissioner shall issue and enforce a written or printed stop sale order to the owner or*  
7059 *custodian of any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of*  
7060 *such seeds, or screenings if he finds a violation of any provision of this article. The stop sale order*  
7061 *shall prohibit further sale of such seeds, mixtures of seeds, or screenings until the Commissioner has*  
7062 *evidence of compliance. The owner or custodian shall have the right to judicial review in accordance*  
7063 *with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The issuance of a stop sale*  
7064 *order shall not limit the right of the Commissioner to pursue further remedy.*  
7065 *§ 3.2-4013. Seizure; disposition of seeds.*  
7066 *Any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such*  
7067 *seeds, or screenings sold, offered for sale, or held with intent to sell contrary to the provisions of this*  
7068 *article shall be subject to seizure on complaint of the Commissioner to the appropriate court. If the*  
7069 *court finds the seeds, mixtures of seeds, or screenings in violation of this article and orders*

7070 condemnation, such seeds, mixtures of seeds, or screenings shall be denatured, processed, destroyed,  
 7071 relabeled, or otherwise disposed of; provided, that the court first allows the claimant an opportunity to  
 7072 apply for the release of the seeds, mixtures of such seeds, or screenings, or permission to condition or  
 7073 relabel to bring the material into compliance.

7074 § 3.2-4014. Assessment for variance from guarantee.

7075 A. The Commissioner may make an assessment for variance from guarantee upon the guarantor if  
 7076 any person sells seed if he finds such seed: (i) is not within testing tolerance of the labeled analysis; (ii)  
 7077 contains restricted noxious-weed seeds in excess of the amount claimed on the label; (iii) is not labeled;  
 7078 or (iv) is not labeled in accordance with the provisions of this article. The Commissioner shall make an  
 7079 assessment for variance from guarantee equivalent to one percent of the amount of money the person  
 7080 from whom the sample was taken receives from the sale of the seed or \$100 (whichever is greater),  
 7081 upon each lot of seed or portion thereof the Commissioner found in violation, except as provided in  
 7082 subsection B of § 3.2-4014. The Commissioner shall make the assessment for variance from guarantee  
 7083 only on the lot or portion sold after the Commissioner sampled the lot.

7084 B. The Commissioner shall make an assessment for variance from guarantee upon the guarantor of  
 7085 three times the amount the Commissioner calculates pursuant to subsection A of § 3.2-4014 if the  
 7086 Commissioner finds that: (i) the seed contains prohibited noxious-weed seeds; (ii) the seed contains  
 7087 restricted noxious-weed seeds in a prohibited amount; (iii) the guarantor has mislabeled such seed as to  
 7088 variety including a component of a mixture; (iv) the person who sold the seed does not have the records  
 7089 required in § 3.2-4006 available for inspection; or (v) the person who sold the seed does not have a  
 7090 laboratory analysis available for inspection.

7091 C. The guarantor on whom the assessment for variance from guarantee is made shall pay the  
 7092 assessment to the Commissioner within 60 days from the date the Commissioner issues the assessment.  
 7093 Any person who fails to pay the assessment within 60 days shall pay a late fee of 10 percent of the  
 7094 assessment to the Commissioner in addition to the assessment. The Commissioner shall revoke the  
 7095 license of any person who fails to pay an assessment.

7096 § 3.2-4015. Prohibitions.

7097 It is unlawful to:

7098 1. Transport, offer for transportation, sell, or offer for sale seed or seed mixtures:

7099 a. Unless the germination test to determine the percentage of germination required by § 3.2-4008 is  
 7100 completed within nine months prior to the month of transportation, sale, or offer for sale;

7101 b. Not labeled in compliance with this article, not registered or falsely stated to be registered under  
 7102 § 3.2-4009, or having a false or misleading labeling or claim;

7103 c. If there has been a false or misleading advertisement with regards to the seed;

7104 d. Consisting of, or containing prohibited noxious-weed seeds in any amount;

7105 e. Containing restricted noxious-weed seeds, except as prescribed by regulations;

7106 f. Containing weed seeds in excess of one percent by weight, except as prescribed by regulations;

7107 g. That have been treated and not labeled as required;

7108 h. To which there is affixed names or terms that create a misleading impression as to the kind, kind  
 7109 and variety, history, productivity, quality, or origin of the seed;

7110 i. Represented to be certified, registered, or foundation seed unless it has been produced, processed  
 7111 and labeled in accordance with the procedures and in compliance with regulations of an officially  
 7112 recognized certifying agency;

7113 j. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in  
 7114 this article except those kinds named in regulations adopted by the Board as having agronomic value  
 7115 and flower seed generally defined as hybrids prior to the enactment of subsections G and H of  
 7116 § 3.2-4008 on July 1, 1966 as determined by regulations adopted by the Board;

7117 k. Hybrid seed from a crop that has been inspected in the field by a duly authorized inspector and  
 7118 rejected because of failure to conform to the controlled conditions as specified by regulations;

7119 l. Unless it conforms to the definition of a "lot"; and

7120 m. Unless the variety or hybrid name or designation is the first variety or hybrid name or  
 7121 designation assigned to it by the owner of the variety or hybrid.

7122 2. Transport, offer for transportation, sell, or offer for sale screenings unless labeled as provided in  
 7123 subsection F of § 3.2-4008.

7124 3. Detach, alter, deface, or destroy any label required pursuant to this article or alter or substitute  
 7125 seed in any manner that may defeat the purpose of this article.

7126 4. Disseminate false or misleading advertisement concerning agricultural, vegetable, flower, tree and  
 7127 shrub, lawn and turf seeds, or screenings.

7128 5. Hinder or obstruct the Commissioner in the performance of his duties.

7129 6. Fail to comply with or supply inaccurate information in reply to a stop sale order; remove labels  
 7130 attached to or dispose of seed or screenings held under such order except as specified by the  
 7131 Commissioner.

- 7132 7. Use the name of the Department or the results of tests and inspections made by the Department  
7133 for advertising purposes.
- 7134 8. Use the words "type" or "trace" in lieu of information required by this article.
- 7135 9. Label and offer for sale seed without keeping complete records as specified in § 3.2-4006.
- 7136 10. Fail to obtain a license in accordance with § 3.2-4005.
- 7137 11. Fail to register a lawn and turf seed mixture in accordance with § 3.2-4009.
- 7138 12. Fail to pay inspection fees in accordance with § 3.2-4010.
- 7139 13. Sell, offer for sale, or advertise as noncertified a variety if a certificate of plant variety  
7140 protection has been issued under the Plant Variety Protection Act specifying sale only as a class of  
7141 certified seed. The guarantor may label seed from a certified lot by variety name when the guarantor  
7142 uses the seed in a mixture if the guarantor is the owner of the variety or the owner of the variety gives  
7143 the guarantor approval to use the variety name.
- 7144 § 3.2-4016. Exemptions from certain provisions.
- 7145 A. The provisions of §§ 3.2-4008 and 3.2-4015 and subdivision 6 of § 3.2-4001 shall not apply to:
- 7146 1. Seed or grain sold or represented to be sold for purposes other than for planting, except as  
7147 required by subsection F of § 3.2-4008;
- 7148 2. Seed for conditioning when: (i) consigned to, being transported to, or stored in a processing  
7149 establishment; and (ii) the accompanying invoice or labeling bears the statement "Seed for  
7150 conditioning;"
- 7151 3. Any carrier of seed or screenings in the ordinary course of business provided that the carrier does  
7152 not also produce, condition, or market agricultural, vegetable, flower, tree and shrub, lawn and turf  
7153 seeds, or screenings; and
- 7154 4. Untested seed sold on his own premises by a grower who collected gross receipts for selling seeds  
7155 produced by him of \$1,000 or less during the preceding year provided that the seed bears the statement  
7156 "These seeds have not been tested" on each package or bag.
- 7157 B. The provisions of § 3.2-4009 shall not apply to any person who sells or offers for sale:
- 7158 1. Any lawn and turf seed mixture provided he: (i) acted in good faith; and (ii) possessed a  
7159 statement showing that the lawn and turf seed mixture has been previously registered and approved for  
7160 sale;
- 7161 2. Any agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings that are  
7162 incorrectly labeled or represented as to kind, variety, or origin and cannot be identified by official  
7163 examination unless he fails to: (i) obtain an invoice or grower's declaration or other labeling  
7164 information; or (ii) take other reasonable precautions to insure the identity is that stated; and
- 7165 3. Any tree or shrub seeds that are incorrectly labeled or represented as to subspecies, locality of  
7166 collection, or year of collection unless he fails to: (i) obtain an invoice, grower's declaration, or other  
7167 labeling information; or (ii) take other reasonable precautions to insure the accuracy of these statements  
7168 as presented on the label.
- 7169 § 3.2-4017. Disclaimers, nonwarranties, and limited warranties.
- 7170 No disclaimer, nonwarranty, or limited warranty used in any invoice, advertising, labeling, nor any  
7171 other written, printed or graphic matter pertaining to seed may deny or modify any information required  
7172 by this article or regulations adopted hereunder.
- 7173 § 3.2-4018. Notice of violations; warning.
- 7174 A. The Commissioner shall notify the custodian of any seed or screenings in violation of this article.  
7175 The Commissioner shall forward a copy of notice to the guarantor.
- 7176 B. Nothing in this article requires that the Commissioner report for prosecution or institute seizure  
7177 proceedings if the Commissioner considers the violation of the law to be minor. In such cases, the  
7178 Commissioner may provide a notice of warning in writing.
- 7179 § 3.2-4019. Duty of attorney for Commonwealth.
- 7180 It shall be the duty of each attorney for the Commonwealth to whom any violation of this article is  
7181 reported to commence proceedings in the appropriate court without delay.
- 7182 § 3.2-4020. Penalty.
- 7183 Any violation of this article is a Class 3 misdemeanor.
- 7184 Article 2.  
7185 Certified Seed Board.
- 7186 § 3.2-4021. Certified Seed Board; purpose.
- 7187 The Certified Seed Board is hereby established as a policy board that is a unit of and is within the  
7188 Cooperative Extension of the Virginia Polytechnic Institute and State University. The purpose of the  
7189 Certified Seed Board is to establish certification standards for agricultural and vegetable seed.
- 7190 § 3.2-4022. Membership; terms; quorum; meetings.
- 7191 The Certified Seed Board shall have a total membership of seven consisting of two nonlegislative  
7192 citizen members and five ex officio members. Nonlegislative citizen members shall be appointed as

7193 follows: one member of the Virginia Seedsmen's Association and one member of the Virginia Crop  
 7194 Improvement Association shall be appointed by the Governor subject to confirmation by the General  
 7195 Assembly. Such appointments may be made from lists of three names nominated by each such  
 7196 Association. The Commissioner, the Director of the Agricultural Experiment Station at Blacksburg, the  
 7197 Director of the Virginia Cooperative Extension, the Head of the Crop and Soil Environmental Sciences  
 7198 Department of the Virginia Polytechnic Institute and State University, and the Dean for the School of  
 7199 Agriculture at Virginia State University or their designees shall serve *ex officio* with voting privileges.  
 7200 Nonlegislative citizen members of the Certified Seed Board shall be citizens of the Commonwealth.

7201 Nonlegislative citizen members of the Certified Seed Board shall serve for terms of three years. Ex  
 7202 officio members of the Certified Seed Board shall serve terms coincident with their terms of office.  
 7203 Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.  
 7204 Vacancies shall be filled in the same manner as the original appointments. All members may be  
 7205 reappointed.

7206 The Certified Seed Board shall elect a chairman and vice-chairman from among its membership. A  
 7207 majority of the members shall constitute a quorum. The meetings of the Certified Seed Board shall be  
 7208 held at the call of the chairman or whenever the majority of the members so request.

7209 The Board shall maintain an office in Blacksburg from which place its duties shall be performed.

7210 § 3.2-4023. Compensation and expenses.

7211 The members of the Board shall serve without compensation, but shall be reimbursed for all  
 7212 reasonable and necessary expenses incurred in the performance of their duties as provided in  
 7213 § 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Certified Seed  
 7214 Board. Expenses shall be paid by the Treasurer, on warrants of the Comptroller, and issued on  
 7215 vouchers signed by the chairman of the Certified Seed Board or his designee.

7216 § 3.2-4024. Powers and duties of the Certified Seed Board.

7217 The Certified Seed Board shall have the following powers and duties:

7218 1. To encourage the production and use of certified seed as an economic measure when consistent  
 7219 with a fair profit for the certified seed producer; to advise cooperation of marketing systems for  
 7220 certified seed producers through seed dealers or cooperative warehouses; to control standards and  
 7221 grades and distribution of certified seed stocks other than through private sales by producers; to make  
 7222 all certified seed stocks available for market demands through pooling or other means; to insure to  
 7223 producers uniform percentage sales; and to distribute among producers on a fair basis the carry-over of  
 7224 unsold certified seed stocks for sale and distribution commercially;

7225 2. Adopt regulations that establish standards of health, vigor, purity, and type for the certification of  
 7226 agricultural seed, vegetable seed and of tubers used for planting purposes;

7227 3. Provide for the certification and procurement of agricultural and vegetable seed, and of tubers  
 7228 used for planting purposes;

7229 4. Adopt brands;

7230 5. Select producers of certified seed by general regulation and systematic examination; and

7231 6. Under the supervision of the Director of the Cooperative Extension Service of the Virginia  
 7232 Polytechnic Institute and State University and at the discretion of the Certified Seed Board, appoint a  
 7233 chief of field forces; additional field personnel as necessary; and a full-time administrative secretary  
 7234 who shall have charge of all clerical assistants and all records and official files of the Board.

7235 § 3.2-4025. Regulations.

7236 The Certified Seed Board may adopt regulations after a public hearing and investigation. At least 15  
 7237 days prior to the public hearing, the Certified Seed Board shall publish a notice of the general object,  
 7238 time, and place in a newspaper of general circulation published in the City of Richmond, together with  
 7239 any other dissemination of notice as is deemed advisable.

7240 § 3.2-4026. Illegal use of word "certified"; who may make certification; standards; penalty.

7241 A. It is unlawful for any person to use the term "certified" or imply certification relative to any  
 7242 agricultural seeds, vegetable seeds, tubers for planting purposes, or plants offered for sale unless such  
 7243 seeds, tubers, or plants have been certified as follows:

7244 1. If the seeds, tubers, or plants were produced in another state or in a foreign country, certification  
 7245 by authorized inspection officials of the place of origin shall be sufficient if accepted by the Board.

7246 2. If the seeds, tubers, or plants were produced in Virginia, certification shall be by the producers  
 7247 under authorization of the Board, its agents, or the Department.

7248 B. Any person who violates this section is guilty of a Class 3 misdemeanor. Each violation shall be a  
 7249 separate offense.

7250 § 3.2-4027. Certification by Department, Commissioner, or Board not affected.

7251 Nothing contained in this chapter shall be construed to regulate, restrict, or affect the certification of  
 7252 seeds, plants, or other materials by the Department, the Commissioner, or the Board.

7253 CHAPTER 41.

7254 SEED POTATOES.

- 7255 § 3.2-4100. Definitions.
- 7256 As used in this chapter, unless the context requires a different meaning:
- 7257 "Approved seed potatoes" means disease-free potatoes and parts thereof that conform to the
- 7258 standards established by the Seed Potato Board.
- 7259 "Seed potatoes" means potatoes and parts thereof intended for propagation or for the production of
- 7260 commercial potatoes.
- 7261 § 3.2-4101. Seed Potato Board; purpose.
- 7262 The Seed Potato Board is established as a policy board in the executive branch of state government.
- 7263 The purpose of the Seed Potato Board is to establish standards for seed potatoes and to carry out the
- 7264 provisions of this chapter.
- 7265 § 3.2-4102. Membership; terms; quorum; meetings.
- 7266 The Seed Potato Board shall have a total membership of seven nonlegislative citizen members
- 7267 appointed by the Governor and subject to confirmation by the General Assembly. The members shall be
- 7268 from the principal potato-growing areas of the Commonwealth and actively engaged in potato
- 7269 production. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired
- 7270 terms. Vacancies shall be filled in the same manner as the original appointments. All members may be
- 7271 reappointed. Members shall be appointed for terms of four years. The Seed Potato Board shall elect a
- 7272 chairman and vice-chairman from among its membership. A majority of the members shall constitute a
- 7273 quorum. The Seed Potato Board shall meet at least once each year prior to the beginning of the
- 7274 seed-potato-buying season, at the call of the chairman, and whenever the majority of the members so
- 7275 request.
- 7276 § 3.2-4103. Compensation; expenses.
- 7277 Members shall receive such compensation for the performance of their duties as provided in
- 7278 § 2.2-2813. Members shall be reimbursed for all reasonable and necessary expenses incurred in the
- 7279 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of
- 7280 compensation and expenses of the members shall be provided by the Department.
- 7281 § 3.2-4104. Powers and duties of the Seed Potato Board.
- 7282 The Seed Potato Board shall have the following powers and duties:
- 7283 1. Adopt regulations to establish standards for seed potatoes and to carry out the provisions of this
- 7284 chapter;
- 7285 2. At the recommendation of the chairman, request that the Commissioner, the Dean of the College
- 7286 of Agriculture and Life Sciences, Virginia Polytechnic Institute and State University, the chairman of the
- 7287 Certified Seed Board, and the Director of the Eastern Shore Agricultural Research and Extension Center
- 7288 at Painter appoint representatives to advise the Seed Potato Board; and
- 7289 3. Submit an annual report to the Governor and the General Assembly for publication as a report
- 7290 document as provided in the procedures of the Division of Legislative Automated Systems for the
- 7291 processing of legislative documents and reports. The chairman shall submit to the Governor and the
- 7292 General Assembly an annual executive summary of the interim activity and work of the Seed Potato
- 7293 Board no later than the first day of each regular session of the General Assembly. The executive
- 7294 summary shall be submitted as a report document as provided in the procedures of the Division of
- 7295 Legislative Automated Systems for the processing of legislative documents and reports and shall be
- 7296 posted on the General Assembly's website.
- 7297 § 3.2-4105. Standards required of seed potatoes.
- 7298 Any seed potatoes sold, offered for sale, advertised, or shipped in the Commonwealth shall conform
- 7299 to the standards of approved seed potatoes.
- 7300 § 3.2-4106. Exempted sales.
- 7301 Nothing in this chapter shall prohibit the sale of seed potatoes sold by the grower to a planter who
- 7302 has personal knowledge of the conditions under which the seed potatoes were grown.
- 7303 § 3.2-4107. Inspection of potatoes; right of entry; fees; records required.
- 7304 A. The Commissioner shall inspect any seed potatoes. The Commissioner may enter any place of
- 7305 business, warehouse, common carrier, or other place where seed potatoes may be found for the purpose
- 7306 of an inspection. It is unlawful for any person to interfere with such inspections.
- 7307 B. The fee for inspection shall not exceed the lesser of the current rate for federal-state inspection of
- 7308 table stock potatoes or the reasonable cost of inspection. The Commissioner shall abate any fee to the
- 7309 extent funds are appropriated from the general fund for seed potato inspection.
- 7310 C. Bills of lading, invoices, or other records accompanying any shipment of approved seed potatoes
- 7311 shall give the name of the consignee, consignor, and custodian, if any. The Commissioner shall have the
- 7312 right to inspect such records.
- 7313 § 3.2-4108. "Stop sale" order; seizure; condemnation.
- 7314 A. When the Commissioner finds seed potatoes sold or offered for sale in violation of this chapter or
- 7315 any regulation hereunder, he may issue a "stop sale" order to the owner or custodian. It is unlawful for

7316 anyone to sell any seed potatoes under a "stop sale" order until the Commissioner has evidence that  
 7317 such potatoes will: (i) not be used for propagation purposes; or (ii) be used outside the Commonwealth.  
 7318 When the Commissioner has such evidence, he shall issue a notice releasing potatoes from the "stop  
 7319 sale" order.

7320 B. Any shipment of seed potatoes in violation of this chapter shall be subject to seizure on complaint  
 7321 of the Commissioner to the appropriate court in the city or county where the seed potatoes are located.  
 7322 If the court finds the seed potatoes to be in violation and orders condemnation, the owner shall be  
 7323 permitted to post a bond double the amount of the value of the seed potatoes. Then the owner shall  
 7324 have 10 days from the date of the order of condemnation to denature, destroy, or process the potatoes  
 7325 for other than propagation purposes. If the owner fails to post the bond required or act within the time  
 7326 limit set forth in the preceding sentence, then the court shall order that the seed potatoes be denatured,  
 7327 destroyed, or processed for other than propagation purposes.

7328 § 3.2-4109. Commissioner may permit sale of substandard potatoes and experimental varieties.

7329 The Commissioner may permit the sale of seed potatoes that do not meet the standards of approved  
 7330 seed potatoes when he deems necessary. The Commissioner may permit the sale of experimental  
 7331 varieties of potatoes for propagation purposes. He may delegate the authority granted hereunder to the  
 7332 Seed Potato Board.

7333 § 3.2-4110. Notice; hearings.

7334 A. If the Commissioner finds a violation of this chapter or of any regulation adopted hereunder, he  
 7335 shall notify the custodian of the seed potatoes in writing, designating a time and place for a hearing,  
 7336 and send a copy of the notice to the owner or shipper. Any party notified shall be given an opportunity  
 7337 to be heard under the regulations adopted hereunder. If it appears after proper hearing that any of the  
 7338 provisions of this chapter have been violated, the Commissioner may certify the facts to the attorney for  
 7339 the Commonwealth in the county or city where the violation occurred, and furnish him with a copy of  
 7340 the results of the inspection duly authenticated and under the oath of the inspector.

7341 B. It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement  
 7342 of this chapter, and to whom any violation is reported, to commence proceedings in the appropriate  
 7343 court.

7344 § 3.2-4111. Penalties.

7345 Any person violating any provisions of this chapter or any regulation adopted hereunder is guilty of  
 7346 a Class 1 misdemeanor.

#### CHAPTER 42.

#### IMPLEMENTATION OF TOBACCO MASTER SETTLEMENT AGREEMENT.

##### Article 1.

##### Requirements for Tobacco Product Manufacturers.

7351 § 3.2-4200. Definitions.

7352 As used in this article:

7353 "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set  
 7354 forth in Exhibit C to the Master Settlement Agreement.

7355 "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or  
 7356 is under common ownership or control with, another person. Solely for purposes of this definition, the  
 7357 terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent  
 7358 thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee,  
 7359 association, corporation or any other organization or group of persons.

7360 "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

7361 "Cigarette" means any product that contains nicotine, is intended to be burned or heated under  
 7362 ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in  
 7363 any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which,  
 7364 because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely  
 7365 to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any  
 7366 substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or  
 7367 its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette  
 7368 described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which  
 7369 means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use  
 7370 and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes  
 7371 of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual  
 7372 "cigarette."

7373 "Master Settlement Agreement" means the settlement agreement and related documents entered into  
 7374 on November 23, 1998, by the Commonwealth and leading United States tobacco product  
 7375 manufacturers.

7376 "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial  
 7377 institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1



7378 billion where such arrangement requires that such financial institution hold the escrowed funds'  
 7379 principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the  
 7380 funds into escrow from using, accessing or directing the use of the funds' principal except as consistent  
 7381 with subsection B of § 3.2-4201.

7382 "Released claims" means Released Claims as that term is defined in the Master Settlement  
 7383 Agreement.

7384 "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement  
 7385 Agreement.

7386 "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly  
 7387 (and not exclusively through any affiliate):

7388 1. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States,  
 7389 including cigarettes intended to be sold in the United States through an importer (except where such  
 7390 importer is an original participating manufacturer (as that term is defined in the Master Settlement  
 7391 Agreement) that will be responsible for the payments under the Master Settlement Agreement with  
 7392 respect to such cigarettes as a result of the provisions of subsection II (mm) of the Master Settlement  
 7393 Agreement and that pays the taxes specified in subsection II (z) of the Master Settlement Agreement, and  
 7394 provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the  
 7395 United States);

7396 2. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured  
 7397 anywhere that the manufacturer does not intend to be sold in the United States; or

7398 3. Becomes a successor of an entity described in subdivision 1 or 2 of this definition.

7399 The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product  
 7400 manufacturer unless such affiliate itself falls within any of subdivisions 1, 2, and 3 of this definition.

7401 "Units sold" means the number of individual cigarettes sold in the Commonwealth by the applicable  
 7402 tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary  
 7403 or intermediaries, during the year in question, as measured by excise taxes collected by the  
 7404 Commonwealth on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the  
 7405 Commonwealth.

7406 § 3.2-4201. Requirements on tobacco product manufacturers; escrow of funds; civil penalties for  
 7407 violations.

7408 A. Any tobacco product manufacturer selling cigarettes to consumers within the Commonwealth,  
 7409 whether directly or through a distributor, retailer or similar intermediary or intermediaries, after July 1,  
 7410 1999, shall do one of the following:

7411 1. Become a participating manufacturer (as that term is defined in section II (jj) of the Master  
 7412 Settlement Agreement) and generally perform its financial obligations under the Master Settlement  
 7413 Agreement; or

7414 2. Place into a qualified escrow fund by April 15 of the year following the year in question the  
 7415 following amounts (as such amounts are adjusted for inflation):

7416 Year	Amount per unit sold in such year
7417 (except for 1999, the amount per unit sold after July 1, 1999)	
7418 1999	\$ .0094241
7419 2000	\$ .0104712
7420 each of 2001 and 2002	\$ .0136125
7421 each of 2003 through 2006	\$ .0167539
7422 each of 2007 and each year thereafter	\$ .0188482

7423 B. A tobacco product manufacturer that places funds into escrow pursuant to subdivision A 2 shall  
 7424 receive the interest or other appreciation on such funds as earned. Such funds themselves shall be  
 7425 released from escrow only under the following circumstances:

7426 1. To pay a judgment or settlement on any released claim brought against such tobacco product  
 7427 manufacturer by the Commonwealth or any releasing party located or residing in the Commonwealth.  
 7428 Funds shall be released from escrow under this subdivision (i) in the order in which they were placed  
 7429 into escrow and (ii) only to the extent and at the time necessary to make payments required under such  
 7430 judgment or settlement;

7431 2. To the extent that a tobacco product manufacturer establishes that the amount it was required to  
 7432 place into escrow on account of units sold in this Commonwealth in a particular year was greater than  
 7433 the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement,  
 7434 including after final determination of all adjustments, that such manufacturer would have been required  
 7435 to make on account of such units sold had it been a participating manufacturer, the excess shall be  
 7436 released from escrow and revert back to such tobacco product manufacturer; or

7437 3. To the extent not released from escrow under subdivisions 1 or 2, funds shall be released from  
 7438 escrow and revert back to such tobacco product manufacturer 25 years after the date on which they

7439 were placed into escrow.

7440 C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision  
7441 A 2 shall annually certify to the Attorney General that it is in compliance with that subdivision. The  
7442 Attorney General may bring a civil action on behalf of the Commonwealth against any tobacco product  
7443 manufacturer that fails to place into escrow the funds required under this section. Any tobacco product  
7444 manufacturer that fails in any year to place into escrow the funds required under this section shall:

7445 1. Be required within 15 days to place such funds into escrow as shall bring it into compliance with  
7446 this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty in an  
7447 amount not to exceed five percent of the amount improperly withheld from escrow per day of the  
7448 violation and in a total amount not to exceed 100 percent of the original amount improperly withheld  
7449 from escrow;

7450 2. In the case of a knowing violation, be required within 15 days to place such funds into escrow as  
7451 shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this  
7452 subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly  
7453 withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the  
7454 original amount improperly withheld from escrow; and

7455 3. In the case of a second knowing violation, be prohibited from selling cigarettes to consumers  
7456 within the Commonwealth (whether directly or through a distributor, retailer or similar intermediary)  
7457 for a period not to exceed two years.

7458 Each failure to make an annual deposit required under this section shall constitute a separate  
7459 violation.

7460 Article 2.

7461 Escrow Funds Contributed to Commonwealth.

7462 § 3.2-4202. Assignment to the Commonwealth of rights to tobacco manufacturer escrow funds;  
7463 contribution to the Commonwealth.

7464 Notwithstanding the provisions of subsection B of § 3.2-4201, a tobacco product manufacturer who  
7465 elects to place funds into escrow pursuant to subdivision A 2 of § 3.2-4201 may make an irrevocable  
7466 assignment of its interest in the funds to the benefit of the Commonwealth. Such assignment shall be  
7467 permanent and shall apply to all funds in the subject escrow account at the time of assignment or that  
7468 may subsequently come into such account, including those deposited into the escrow account prior to  
7469 the assignment being executed, those deposited into the escrow account after the assignment is executed,  
7470 and interest or other appreciation on such funds. Any interest or other appreciation withdrawn from the  
7471 subject escrow account prior to the time of assignment shall not be a part of the assignment. The  
7472 tobacco product manufacturer, the Attorney General, and the financial institution where the escrow  
7473 account is maintained shall make such amendments to the qualified escrow account agreement, title to  
7474 the account, and the account itself as may be necessary to effectuate an irrevocable assignment of rights  
7475 executed pursuant to this section or a withdrawal or payment of funds from the escrow account  
7476 pursuant to § 3.2-4203. An assignment of rights executed pursuant to this section shall be in writing,  
7477 signed by a duly authorized representative of the tobacco product manufacturer making the assignment,  
7478 and shall become effective upon delivery of the assignment to the Attorney General and the financial  
7479 institution where the escrow account is maintained.

7480 § 3.2-4203. Withdrawal of escrow funds assigned and contributed to the Commonwealth.

7481 Notwithstanding the provisions of subsection B of § 3.2-4201, any escrow funds assigned and  
7482 contributed to the Commonwealth pursuant to § 3.2-4202, less the aggregate limitation for incentive  
7483 payments to all small tobacco product manufacturers for the relevant year due from the escrow funds  
7484 pursuant to § 58.1-439.15:01, shall be withdrawn by the Commonwealth by request of the State  
7485 Treasurer to the Attorney General and upon approval of the Attorney General. The State Treasurer shall  
7486 make such request as soon as practicable and such escrow funds withdrawn shall be deposited into the  
7487 Virginia Health Care Fund established under § 32.1-366.

7488 After such withdrawal, and after the actual incentive payments pursuant to § 58.1-439.15:01 have  
7489 been made from the escrow funds in the escrow account, any remaining escrow funds shall be  
7490 withdrawn under the withdrawal procedures provided in this section, and the withdrawn escrow funds  
7491 shall be deposited into the Virginia Health Care Fund. Nothing in this article shall be construed to  
7492 relieve a tobacco product manufacturer from any past, current, or future obligations it may have  
7493 pursuant to Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of this chapter.

7494 Article 3.

7495 Enforcement of Requirements for Tobacco Product Manufacturers.

7496 § 3.2-4204. Definitions.

7497 As used in this article:

7498 "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from  
7499 one another by means of additional modifiers or descriptors, including, but not limited to, "menthol,"  
7500 "lights," "kings," and "100s" and includes any brand name alone or in conjunction with any other word,

7501 trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of  
7502 product identification identical or similar to, or identifiable with, a previously known brand of  
7503 cigarettes.

7504 "Commissioner" means the Tax Commissioner of the Department of Taxation.

7505 "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating  
7506 manufacturer.

7507 "Participating manufacturer" shall have the meaning provided in section II (jj) of the Master  
7508 Settlement Agreement.

7509 "Stamping agent" means (i) a person who is authorized by the Tax Commissioner pursuant to  
7510 § 58.1-1011 to affix Virginia tax stamps to packages, packs, cartons, or other containers of cigarettes;  
7511 or (ii) any person who is required to pay the excise tax imposed on cigarettes pursuant to § 58.1-1001.

7512 Terms defined in § 3.2-4200 shall have the same meaning when used in this article.

7513 § 3.2-4205. Certifications.

7514 A. Every tobacco product manufacturer whose cigarettes are sold in the Commonwealth whether  
7515 directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and  
7516 deliver on a form prescribed by the Attorney General a certification to the Attorney General no later  
7517 than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such  
7518 certification, such tobacco product manufacturer either: is a participating manufacturer or is in full  
7519 compliance with Article 1 (§ 3.2-4200 et seq.) of this chapter.

7520 B. A participating manufacturer shall include in its certification a list of its brand families. The  
7521 participating manufacturer shall update such list 30 days prior to any addition to or modification of its  
7522 brand families by executing and delivering a supplemental certification to the Attorney General.

7523 C. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand  
7524 families (i) separately listing brand families of cigarettes and the number of units sold for each brand  
7525 family that were sold in the Commonwealth during the preceding calendar year, (ii) that have been sold  
7526 in the Commonwealth at any time during the current calendar year, (iii) indicating by an asterisk, any  
7527 brand family sold in the Commonwealth during the preceding calendar year that is no longer being sold  
7528 in the Commonwealth as of the date of such certification, and (iv) identifying by name and address, any  
7529 other manufacturer of such brand families in the preceding calendar year. The nonparticipating  
7530 manufacturer shall update such list 30 days prior to any addition to or modification of its brand  
7531 families by executing and delivering a supplemental certification to the Attorney General.

7532 D. In the case of a nonparticipating manufacturer, such certification shall further certify:

7533 1. That such nonparticipating manufacturer is registered to do business in the Commonwealth or has  
7534 appointed a resident agent for service of process and provided notice thereof as required by § 3.2-4208;

7535 2. That such nonparticipating manufacturer has (i) established and continues to maintain a qualified  
7536 escrow fund as that term is defined in Article 1 (§ 3.2-4200 et seq.) of this chapter; and (ii) executed a  
7537 qualified escrow agreement that conforms to the requirements in Article 1 of this chapter;

7538 3. That such nonparticipating manufacturer is in full compliance with Article 1 (§ 3.2-4200 et seq.)  
7539 of this chapter and this article, and any regulations promulgated pursuant thereto; and

7540 4. The (i) name, address and telephone number of the financial institution where the nonparticipating  
7541 manufacturer has established such qualified escrow fund required pursuant to Article 1 (§ 3.2-4200 et  
7542 seq.) of this chapter; (ii) account number of such qualified escrow fund and subaccount number for the  
7543 Commonwealth; (iii) amount such nonparticipating manufacturer placed in such fund for cigarettes sold  
7544 in the Commonwealth during the preceding calendar year, the date or dates and amount of each such  
7545 deposit, and verification of those dates and amounts of deposits as may be deemed necessary by the  
7546 Attorney General; and (iv) amounts of and dates of any withdrawal or transfer of funds the  
7547 nonparticipating manufacturer made at any time from such fund or from any other qualified escrow  
7548 fund into which it has at any time made escrow payments pursuant to Article 1 of this chapter.

7549 E. A tobacco product manufacturer may not include a brand family in its certification unless (i) in  
7550 the case of a participating manufacturer, such participating manufacturer affirms that the brand family  
7551 is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement  
7552 Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement  
7553 Agreement; and (ii) in the case of a nonparticipating manufacturer, said nonparticipating manufacturer  
7554 affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 1 (§ 3.2-4200 et  
7555 seq.) of this chapter. Nothing in this section shall be construed as limiting or otherwise affecting the  
7556 Commonwealth's right to maintain that a brand family constitutes cigarettes of a different tobacco  
7557 product manufacturer for purposes of calculating payments under the Master Settlement Agreement or  
7558 for purposes of Article 1 of this chapter.

7559 F. The tobacco product manufacturers shall maintain all invoices and documentation of sales and  
7560 other such information relied upon for such certification for a period of five years, unless otherwise  
7561 required by law to maintain them for a greater period of time.

7562 § 3.2-4206. *Directory of cigarettes approved for stamping and sale.*

7563 A. *Not later than October 1, 2003, the Attorney General shall develop and publish on its website a*  
7564 *directory listing all tobacco product manufacturers that have provided current and accurate*  
7565 *certifications conforming to the requirements of § 3.2-4205 and all brand families that are listed in such*  
7566 *certifications (the Directory), except as noted below.*

7567 1. *The Attorney General shall not include or retain in such Directory the name or brand families of*  
7568 *any nonparticipating manufacturer that fails to provide the required certification or whose certification*  
7569 *the Attorney General determines is not in compliance with subsections C and D of § 3.2-4205, unless the*  
7570 *Attorney General has determined that such violation has been cured to his satisfaction.*

7571 2. *Neither a tobacco product manufacturer nor brand family shall be included or retained in the*  
7572 *Directory if the Attorney General concludes that (i) in the case of a nonparticipating manufacturer all*  
7573 *escrow payments required pursuant to Article 1 (§ 3.2-4200 et seq.) of this chapter for any period for*  
7574 *any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid*  
7575 *into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the*  
7576 *Attorney General, or (ii) all outstanding final judgments, including interest thereon, for violations of*  
7577 *Article 1 of this chapter have not been fully satisfied for such brand family and such manufacturer.*

7578 B. *The Attorney General shall update the Directory as necessary in order to correct mistakes and to*  
7579 *add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity*  
7580 *with the requirements of this article.*

7581 C. *Notwithstanding the provisions of subsection A, in the case of any nonparticipating manufacturer*  
7582 *who has established a qualified escrow account pursuant to Article 1 (§ 3.2-4200 et seq.) of this chapter*  
7583 *that has been approved by the Attorney General, the Attorney General may not remove such*  
7584 *manufacturer or its brand families from the Directory unless the manufacturer has been given at least*  
7585 *30 days' notice of such intended action. For purposes of this section, notice shall be deemed sufficient if*  
7586 *it is sent either electronically or by first-class mail to an electronic mail address or postal mailing*  
7587 *address, as the case may be, provided by the manufacturer in its most recent certification filed pursuant*  
7588 *to § 3.2-4205. The notified nonparticipating manufacturer shall have 30 days from receipt of the notice*  
7589 *to either come into compliance with the applicable requirements or, in the alternative, secure a*  
7590 *temporary injunction against removal from the Directory. For purposes of a temporary injunction sought*  
7591 *pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the*  
7592 *Directory may be deemed to constitute irreparable harm.*

7593 D. *Every stamping agent shall provide and update as necessary an electronic mail address to the*  
7594 *Attorney General for the purpose of receiving any notifications as may be required by this article.*

7595 § 3.2-4207. *Prohibition against stamping or sale or import of cigarettes not in the Directory.*

7596 *It shall be unlawful for any person (i) to affix a stamp to a package or other container of cigarettes*  
7597 *of a tobacco product manufacturer or brand family not included in the Directory, or (ii) to sell, offer or*  
7598 *possess for sale in the Commonwealth, ship or otherwise distribute into or within the Commonwealth, or*  
7599 *import for personal consumption into the Commonwealth, cigarettes of a tobacco product manufacturer*  
7600 *or brand family not included in the Directory. For purposes of this article a person shall be deemed to*  
7601 *have received notice that cigarettes of a tobacco product manufacturer or brand family are not included*  
7602 *in the Directory at the time the Attorney General's website fails to list any such cigarettes in the*  
7603 *Directory or at the time any such cigarettes are removed from the Directory. A person purchasing*  
7604 *cigarettes for resale shall not be in violation of this section (i) if at the time of such purchase the*  
7605 *manufacturer and brand families of the cigarettes are included in the Directory and the cigarettes are*  
7606 *otherwise lawfully stamped and sold within 14 days of the date such manufacturer and brand families*  
7607 *were removed from the Directory or (ii) if, in the case of a retailer, the cigarettes are sold or delivered*  
7608 *to consumers within 14 days after receipt of delivery of such cigarettes from a wholesaler, which*  
7609 *cigarettes otherwise have been lawfully purchased from the same wholesaler. Any manufacturer,*  
7610 *wholesaler or retail dealer selling cigarettes for resale of a manufacturer or brand family that has been*  
7611 *removed from the Directory shall notify the purchaser of such cigarettes of that fact at the time of*  
7612 *delivery of such cigarettes. Unless otherwise provided by contract or purchase agreement, a purchaser*  
7613 *shall be entitled to a refund from the manufacturer, wholesaler or retail dealer from whom the*  
7614 *cigarettes were purchased of the purchase price of any cigarettes that are the product of a manufacturer*  
7615 *or brand family removed from the Directory. The Commissioner shall, by regulation or guidelines,*  
7616 *provide for the refund of the purchase price of tax stamps that have been lawfully affixed to cigarettes*  
7617 *that may not be sold pursuant to the provisions of this section.*

7618 § 3.2-4208. *Agent for service of process.*

7619 A. *Any nonresident or foreign nonparticipating manufacturer that has not registered to do business*  
7620 *in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to*  
7621 *having its brand families listed or retained in the Directory, appoint and continually engage without*  
7622 *interruption the services of an agent in the Commonwealth to act as agent for the service of process on*  
7623 *whom all process, and any action or proceeding against it concerning or arising out of the enforcement*

7624 of this article or Article 1 (§ 3.2-4200 et seq.) of this chapter may be served in any manner authorized  
 7625 by law. Such service shall constitute legal and valid service of process on the nonparticipating  
 7626 manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and  
 7627 proof of the appointment and availability of such agent to the satisfaction of the Commissioner and  
 7628 Attorney General.

7629 B. The nonparticipating manufacturer shall provide notice to the Commissioner and Attorney General  
 7630 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the  
 7631 satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days  
 7632 prior to the termination of an existing agency appointment. In the event an agent terminates an agency  
 7633 appointment, the nonparticipating manufacturer shall notify the Commissioner and Attorney General  
 7634 of said termination within five calendar days and shall include proof to the satisfaction of the Attorney  
 7635 General of the appointment of a new agent.

7636 C. Any nonparticipating manufacturer whose products are sold in this state, without appointing or  
 7637 designating an agent as herein required, shall be deemed to have appointed the Secretary of the  
 7638 Commonwealth as such agent and may be proceeded against in courts of the Commonwealth by service  
 7639 of process upon the Secretary of the Commonwealth. The appointment of the Secretary of the  
 7640 Commonwealth as such agent shall not satisfy the condition precedent to having its brand families listed  
 7641 or retained in the Directory.

7642 § 3.2-4209. Reporting of information.

7643 A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed  
 7644 by the Commissioner, each stamping agent shall submit to the Attorney General such information as the  
 7645 Attorney General requires to facilitate compliance with this article, including, but not limited to, a list  
 7646 by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the  
 7647 previous calendar quarter or otherwise paid the tax due for such cigarettes. For roll-your-own tobacco,  
 7648 in lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent  
 7649 submit the total quantity in ounces, by brand family, of all such roll-your-own tobacco in accordance  
 7650 with the invoice accompanying each shipment he initiates, as provided in subsection D of § 58.1-1003.2,  
 7651 or for which the stamping agent otherwise paid the tax due for such roll-your-own tobacco. The  
 7652 stamping agent shall maintain, and make available to the Commissioner and Attorney General, all  
 7653 invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other  
 7654 information relied upon in reporting to the Attorney General for a period of five years.

7655 B. In addition to the information required to be submitted pursuant to subsection A or any other  
 7656 provision of law, the Attorney General may require a stamping agent, distributor or tobacco product  
 7657 manufacturer to submit any additional information including, but not limited to, samples of the  
 7658 packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine  
 7659 whether a tobacco product manufacturer is in compliance with this article.

7660 C. On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a  
 7661 stamping agent shall provide to the requesting tobacco product manufacturer the total number of  
 7662 cigarettes, by brand family, which the stamping agent reported to the Attorney General pursuant to  
 7663 subsection A, provided that such information provided by the stamping agent to a tobacco manufacturer  
 7664 shall be limited to the brand families of that manufacturer as listed in the Directory established  
 7665 pursuant to § 3.2-4206. A stamping agent receiving a request pursuant to this subsection shall provide  
 7666 the requested information within 30 days from receipt of the request.

7667 § 3.2-4210. Escrow fund information.

7668 The Attorney General at any time may require a nonparticipating manufacturer to provide proof  
 7669 from the financial institution in which such manufacturer has established a qualified escrow fund for the  
 7670 purpose of compliance with Article 1 (§ 3.2-4200 et seq.) of this chapter of the amount of money in and  
 7671 the dates of deposits to such fund being held on behalf of the Commonwealth and listing the amounts  
 7672 and dates of all withdrawals from such fund.

7673 § 3.2-4211. Quarterly escrow payments by certain nonparticipating manufacturers.

7674 A. Notwithstanding the provisions of § 3.2-4201, on and after January 1, 2007, the Attorney General  
 7675 may require a nonparticipating manufacturer that is a new market entrant to make the escrow payments  
 7676 required by § 3.2-4201 on a quarterly, rather than annual basis. For the purposes of this section, a  
 7677 "new market entrant" shall mean a tobacco product manufacturer that first seeks certification pursuant  
 7678 to § 3.2-4205 on or after January 1, 2007.

7679 B. A nonparticipating manufacturer required to make quarterly payments pursuant to this section  
 7680 shall place into a qualified escrow account the amounts required pursuant to subdivision A 2 of  
 7681 § 3.2-4201 by the fifteenth of the second month following the end of each calendar quarter, except the  
 7682 payment for the last quarter of a calendar year shall be made by April 15 of the year following the year  
 7683 in question. Any adjustments for inflation to the amounts placed into a qualified escrow pursuant to this  
 7684 section shall be reflected in the payments for the last quarter of a calendar year.

7685 C. A nonparticipating manufacturer required to make payments pursuant to this section shall also  
7686 provide the certification required by subsection C of § 3.2-4201 on a quarterly basis. Any such  
7687 nonparticipating manufacturer that fails in any quarter to place into escrow the funds required under  
7688 this section shall be subject to the penalty provisions of § 3.2-4201.

7689 D. The Attorney General is authorized to create any forms and require any nonparticipating  
7690 manufacturer required to make quarterly payments pursuant to this section to submit any additional  
7691 information as is necessary to enable the Attorney General to determine whether the nonparticipating  
7692 manufacturer is in compliance with the provisions of this section. At the time the nonparticipating  
7693 manufacturer is first certified by the Attorney General pursuant to § 3.2-4205, the Attorney General will  
7694 notify the nonparticipating manufacturer as to whether it will be required to make quarterly payments  
7695 pursuant to this section. The Attorney General may seek an injunction to compel compliance with the  
7696 reporting requirements. In any action brought pursuant to this subsection in which the Commonwealth  
7697 prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of  
7698 the action, and reasonable attorney fees.

7699 E. A nonparticipating manufacturer required to make quarterly payments pursuant to this section  
7700 who fails to properly do so shall be deemed to have failed to make required payments pursuant to  
7701 § 3.2-4201 and shall be subject to all enforcement actions available for a violation of § 3.2-4201.

7702 F. A nonparticipating manufacturer required to make quarterly payments pursuant to this section  
7703 who, to the satisfaction of the Attorney General, has complied with the provisions of Article 1  
7704 (§ 3.2-4200 et seq.) of this chapter and the provisions of this article for a period of at least three  
7705 calendar years may, upon request and upon the concurrence of the Attorney General, be permitted to  
7706 make annual payments pursuant to Article 1 (§ 3.2-4200 et seq.) of this chapter and be relieved of  
7707 further obligation to make quarterly payments.

7708 § 3.2-4212. Penalties and other remedies.

7709 A. In addition to any other civil or criminal penalty or remedy provided by law, upon a  
7710 determination that any person has violated § 3.2-4207 or any regulation adopted pursuant thereto, the  
7711 Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted  
7712 rate. Each stamp affixed and each offer to sell cigarettes in violation of § 3.2-4207 shall constitute a  
7713 separate violation. Upon a determination of a violation of § 3.2-4207 or any regulations adopted  
7714 pursuant thereto, the Commissioner may also impose a civil penalty in an amount not to exceed the  
7715 greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

7716 B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth,  
7717 or imported for personal consumption in the Commonwealth, in violation of § 3.2-4207, shall be deemed  
7718 contraband and may not be sold or offered for sale unless such cigarettes are listed in the Directory.  
7719 Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject  
7720 to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the procedures  
7721 contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so  
7722 confiscated and forfeited shall be destroyed and not resold.

7723 C. The Attorney General, on behalf of the Commissioner, may seek an injunction to restrain a  
7724 threatened or actual violation of § 3.2-4207, subsection A of § 3.2-4209, subsection B of § 3.2-4209, or  
7725 subsection C of § 3.2-4209 by a stamping agent and to compel the stamping agent to comply with such  
7726 provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails, the  
7727 Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action and  
7728 reasonable attorneys' fees.

7729 D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own,  
7730 possess, transport, import, or cause to be imported cigarettes that the person knows or should know are  
7731 intended for distribution or sale in the Commonwealth in violation of § 3.2-4207. A violation of this  
7732 section is a Class 2 misdemeanor.

7733 § 3.2-4213. Notice and review of determination.

7734 A determination of the Attorney General to not list or to remove from the Directory a brand family  
7735 or tobacco product manufacturer shall be subject to review in the manner prescribed by the  
7736 Administrative Process Act (§ 2.2-4000 et seq.).

7737 § 3.2-4214. Promulgation of regulations.

7738 The Commissioner may promulgate regulations necessary to assist him in performing his duties  
7739 prescribed by this article.

7740 § 3.2-4215. Submission to jurisdiction of the Commonwealth; pleadings in English sufficient.

7741 A. Any tobacco product manufacturer that produces cigarettes sold or offered for sale into or within  
7742 the Commonwealth shall be deemed to have submitted to and agreed to the jurisdiction of the courts of  
7743 the Commonwealth for the purpose of trying any action brought by the Commonwealth to enforce  
7744 provisions of this article or Article 1 (§ 3.2-4200 et seq.) of this chapter.

7745 B. In any action brought by the Commonwealth to enforce the provisions of this article or Article 1  
7746 (§ 3.2-4200 et seq.) of this chapter, sufficient notice of the action to the alleged violator shall be given

7747 by a complaint written in the English language. The Commonwealth shall not be required to bear any  
7748 expense of translating such complaint into another language.

7749 § 3.2-4216. Recovery of costs and fees by Attorney General.

7750 In any action brought by the Commonwealth to enforce this article or Article 1 (§ 3.2-4200 et seq.)  
7751 of this chapter in which the Commonwealth prevails, or as part of the settlement of any matter arising  
7752 from an investigation prior to the filing of such action, and in addition to any civil or criminal penalty  
7753 or other amount which the court may determine, the Attorney General shall be entitled to recover the  
7754 reasonable costs of investigation, expert witness fees, costs of the action and reasonable attorneys' fees.

7755 § 3.2-4217. Disgorgement of profits for violations.

7756 If a court determines that a person has violated this article, the court shall order any profits, gain,  
7757 gross receipts or other benefit from the violation to be disgorged and paid to the Treasurer of the  
7758 Commonwealth. Unless otherwise expressly provided, the remedies or penalties provided by this article  
7759 are cumulative to each other and to the remedies or penalties available under all other laws of the  
7760 Commonwealth.

7761 § 3.2-4218. Conflicts.

7762 If an appropriate court finds that the provisions of this article and of Article 1 (§ 3.2-4200 et seq.)  
7763 of this chapter conflict and cannot be harmonized, then the provisions of Article 1 shall control. If any  
7764 section, subsection, subdivision, paragraph, sentence, clause or phrase of this article causes Article 1 to  
7765 no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement  
7766 Agreement, then that portion of this article shall not be valid. If any section, subsection, subdivision,  
7767 paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or  
7768 unconstitutional, such decision shall not affect the validity of the remaining portions of this article or  
7769 any part thereof.

#### CHAPTER 43.

### GRADES, MARKS, AND BRANDS.

#### Article 1.

#### General Provisions.

7774 § 3.2-4300. Definitions.

7775 As used in this article, unless the context requires a different meaning:

7776 "Agricultural product" means any horticultural, viticulture, dairy, livestock, poultry, bee, or other  
7777 farm or garden product.

7778 "Director" means the Director of the Division of Marketing of the Department.

7779 § 3.2-4301. Unmarked products.

7780 This article shall not apply to any agricultural product or products not marked or designated by or  
7781 with any trademark, brand or other markings indicating grade, classification, quality, condition, or size.

7782 § 3.2-4302. Establishment of grades, marks, and brands.

7783 The Director, with the approval of the Commissioner, may adopt regulations governing the voluntary  
7784 use of grades, trademarks, brands, and other markings for agricultural products produced, packed, or  
7785 marked in the Commonwealth. The regulations shall prescribe the: (i) grade, classification, quality,  
7786 condition, size, variety, quantity, or other characteristics of such products; and (ii) marks identifying the  
7787 party responsible for the grading and marking of such products.

7788 § 3.2-4303. Grades recommended by U.S. Department of Agriculture.

7789 The Director, in carrying out the provisions of § 3.2-4302, shall adopt grades recommended or  
7790 adopted by the U.S. Department of Agriculture if they are suitable for use in Virginia. If there is a  
7791 demand for additional or different grades or standards by those persons in the Commonwealth  
7792 producing and handling such products, the Director may establish and adopt grades or standards that  
7793 are additional to or different from those recommended or adopted by the U.S. Department of  
7794 Agriculture.

7795 § 3.2-4304. When special grades, marks, and brands allowed; filing a certificate.

7796 Any person desiring to pack, mark, sell, or offer for sale any agricultural product under any grade,  
7797 trademark, brand, or other markings relating to grade, quality or size, not established and adopted by  
7798 the Director, may file with the Director a certificate describing the special grade, trademark, brand, or  
7799 other markings. If, the Director, with the approval of the Commissioner: (i) approves of the  
7800 completeness of definitions of such special grade, trademark, brand, or other markings described in the  
7801 certificate; (ii) finds that such grade terminology, trademark, brand, other markings, or definitions are  
7802 in no way deceptive; and (iii) determines that definitions used to describe grade, classifications, quality,  
7803 condition, size, variety, or other characteristics of agricultural products clearly document where they  
7804 differ from the official grades, the special grade, trademark, brand, or other markings may thereafter be  
7805 used by the person filing the certificate. For the purpose of this section a brand, trademark, or other  
7806 markings may represent a grade.

7807 § 3.2-4305. Unclassified products.

7808 *This article shall not prevent the use of any trademark or brand not established and adopted, or*  
 7809 *approved by the Director, on or in connection with any agricultural product, if, as a part of such*  
 7810 *trademark or brand, or immediately adjacent thereto, there is printed in letters not less than one-half*  
 7811 *inch in height the word "unclassified."*

7812 *§ 3.2-4306. Enforcement powers of Director.*

7813 *The Director, with the approval of the Commissioner, shall enforce the provisions of this article and*  
 7814 *is empowered to:*

7815 *1. Enter and inspect every place where agricultural products are produced, packed, stored for sale,*  
 7816 *shipped, delivered for shipment, in transit or offered for sale; and to inspect such places and any or all*  
 7817 *agricultural products, containing markings of any kind that indicate grade, classification, quality,*  
 7818 *condition, size, variety and quantity, and containers or equipment found at or in such places. It is*  
 7819 *unlawful for anyone to prevent, hinder or interfere with the Director or his agent in the exercise of any*  
 7820 *power under this subdivision;*

7821 *2. To approve, superintend, control and discharge such inspectors, subordinate inspectors and agents*  
 7822 *as in his discretion may be deemed necessary for the purpose of enforcing the provisions of this article;*  
 7823 *and to prescribe their duties and fix their compensation;*

7824 *3. Prohibit the movement of any agricultural product found to be marked in violation of any of the*  
 7825 *provisions of this article, prior to the product being accepted by a common carrier for shipment in*  
 7826 *interstate transit. Such product shall be repacked or remarked. A lot of any agricultural product shall*  
 7827 *not be considered accepted by a common carrier until the common carrier is loaded, sealed, and the*  
 7828 *bill of lading issued; and*

7829 *4. Cause to be instituted through the attorney for the Commonwealth prosecutions for violations of*  
 7830 *this article.*

7831 *§ 3.2-4307. When products considered as offered for sale.*

7832 *When any agricultural product is in transit, delivered to a common carrier for shipment, or delivered*  
 7833 *for storage, such transit or delivery shall be prima facie evidence that the product is offered for sale.*

7834 *§ 3.2-4308. Grades and brands shall be used in accordance with regulations.*

7835 *It is unlawful to use:*

7836 *1. Any grade, trademark, brand, or other markings established and adopted by the Director on or in*  
 7837 *connection with marking any agricultural product that is not in accordance with regulations established*  
 7838 *and adopted by the Director.*

7839 *2. Any grade, trademark, brand, or other markings indicating grade, classification, quality, condition*  
 7840 *or size, for any agricultural product for which official grades, trademarks, brands, or other markings*  
 7841 *have not been established and adopted by the Director or are not in accordance with the provisions of*  
 7842 *§ 3.2-4304.*

7843 *§ 3.2-4309. Unlawful removal of markings.*

7844 *It is unlawful, except with the consent of the original packer, or in compliance with the regulations,*  
 7845 *for any person to remove from any agricultural product any markings that meet the requirements of this*  
 7846 *article relating to grade, classification, quality, condition, size, variety, quantity and other*  
 7847 *characteristics, or identify the party responsible for the packing or marking.*

7848 *§ 3.2-4310. Penalty for violation.*

7849 *Any person who violates any of the provisions of this article is guilty of a Class 3 misdemeanor.*

7850 *§ 3.2-4311. Defenses to prosecution.*

7851 *No person shall be convicted under the provisions of this article if:*

7852 *1. The person is not a party to the packing, grading, or marking of such product; or*

7853 *2. The agricultural product has passed inspection by an authorized inspector in the voluntary*  
 7854 *inspection service of the Department, or the U.S. Department of Agriculture, and found to be marked in*  
 7855 *accordance with the requirements of this article.*

7856 *Article 2.*

7857 *Virginia Quality Label.*

7858 *§ 3.2-4312. Definitions.*

7859 *As used in this article, unless the context requires a different meaning:*

7860 *"Agricultural and food product" means any horticultural, viticulture, dairy, livestock, poultry, bee,*  
 7861 *other farm or garden product, fish or fishery product, and other foods.*

7862 *"Continuous official inspection" means that an employee or a licensed representative of the Division*  
 7863 *of Marketing or of the U.S. Department of Agriculture, or employees of either, shall regularly and*  
 7864 *continuously examine the commodity as it is being packed.*

7865 *"Director" means the Director of the Division of Marketing of the Department.*

7866 *"Division" means the Division of Marketing of the Department of Agriculture and Consumer*  
 7867 *Services.*

7868 *§ 3.2-4313. Use of Virginia Quality Label to designate inspected products.*

7869 *The Director, with the approval of the Commissioner, may use an outline of Virginia impressed upon*



7870 the labels, tags, seals, or containers of any agricultural or food product that has been subject to the  
 7871 continuous official inspection service indicating that the product is of such quality and description as  
 7872 shown on the label, tag, seal, or container. Such outline map when made use of pursuant to the  
 7873 provisions of this article shall be known as the "Virginia Quality Label."

7874 § 3.2-4314. Collaboration with United States authorities.

7875 In any instance when an authorized department, agent or officer of the United States collaborates  
 7876 with the Division in the inspection of any agricultural or food product, the Virginia Quality Label may,  
 7877 with the consent of the appropriate department, agency or officer of the United States, be used together  
 7878 with the shield of the United States on any label, tag, seal, or container, thus indicating continuous  
 7879 inspectional collaboration between the Division and a department, agency, or officer of the United  
 7880 States.

7881 § 3.2-4315. Division may prepare and distribute labels, tags, and seals with Virginia Quality Label.

7882 The Division may prepare labels, tags and seals impressed with the Virginia Quality Label and the  
 7883 shield of the United States. The Division may furnish the labels, tags, and seals at reasonable prices to  
 7884 any producer, processor, packer, or dresser whose agricultural and food product has been subject to  
 7885 such continuous official state or federal-state inspection service.

7886 § 3.2-4316. Preparation and use of Label by producer; design to be determined by Director.

7887 The Director may adopt regulations that permit any producer, processor, packer, or dresser to make  
 7888 or prepare, or to cause to be made or prepared, the labels, tags, or seals to be placed on his own  
 7889 product, or to print, stamp, or otherwise place or cause to be placed the Virginia Quality Label and the  
 7890 shield of the United States upon such products or containers that have been subject to continuous state  
 7891 or federal-state inspection, so long as the Director, with the approval of the Commissioner, determines  
 7892 the design of the label, tag, seal, stamp, or other device.

7893 § 3.2-4317. Virginia Quality Label Fund established.

7894 A. There is hereby created in the state treasury a special nonreverting fund to be known as the  
 7895 Virginia Quality Label Fund, hereafter referred to as "the Fund." The Fund shall be established on the  
 7896 books of the Comptroller. Moneys in the Fund shall be used solely for the purposes set forth in this  
 7897 chapter. All moneys derived from the furnishing of labels, tags, and seals, or from permitting the use of  
 7898 the Virginia Quality Label or the label with the shield of the United States shall be paid into the state  
 7899 treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and  
 7900 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each  
 7901 fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall  
 7902 be used by the Division to defray the cost of preparing, furnishing, and publicizing the labels, tags, and  
 7903 seals.

7904 § 3.2-4318. Jurisdiction to enjoin unlawful use of Label.

7905 A. Any circuit court in the Commonwealth shall have jurisdiction to enjoin the use of the Virginia  
 7906 Quality Label, a label with the shield of the United States, or any imitation or counterfeit likeness used  
 7907 in violation of this article.

7908 B. The Director, with the approval of the Commissioner, may apply for and an appropriate court  
 7909 may grant a temporary or permanent injunction restraining any person from using the labels described  
 7910 in subsection A.

7911 § 3.2-4319. Certificate as evidence.

7912 Every certificate relating to the analysis, grade, classification, quality, or condition of agricultural  
 7913 products, either raw or processed, that is issued: (i) under this article; (ii) in cooperation between  
 7914 federal and state authorities, agencies, or organizations pursuant to a federal statute and this article;  
 7915 (iii) under a similar act of the legislature of any other state, and every certified copy; and (iv) every  
 7916 certificate issued pursuant to a federal statute, and every certified copy, shall be received in any court  
 7917 of the Commonwealth as prima facie evidence of the truth of the statements contained in the certificate.

7918 § 3.2-4320. Restrictions as to use of Label.

7919 It is unlawful to use the Virginia Quality Label or a label with the shield of the United States, except  
 7920 in accordance with regulations prescribed by the Director with the approval of the Commissioner, and  
 7921 in no case shall it be used upon the label, tag, seal, or container of the product of any farm, factory,  
 7922 mill or of any other producing, processing, packing, preparing, or dressing establishment unless such  
 7923 product is processed, packed, prepared, or dressed under continuous official state or federal-state  
 7924 inspection.

7925 § 3.2-4321. Penalties for misuse or unauthorized use of Virginia Quality Label.

7926 A. It is unlawful for any person:

7927 1. To use the Virginia Quality Label or a label with the shield of the United States in violation of  
 7928 any provisions of this article;

7929 2. To use, with the intent to mislead or deceive, any imitation or counterfeit likeness of the Virginia  
 7930 Quality Label, or a label or shield of the United States: (i) on the label, tag, seal, container, or sign of

7931 any product that is sold or offered for sale; or (ii) in connection with any offer to sell or advertise for  
7932 sale any product.

7933 B. Any person who violates any provision of this article is guilty of a Class 3 misdemeanor.

7934 C. Any corporation incorporated under the laws of the Commonwealth that has for 18 years or more  
7935 prior to June 29, 1948, been using an outline map of Virginia, of its own design, for branding packages  
7936 or containers for agricultural or horticultural products bought and sold by it, shall have the right to  
7937 continue to use such outline map for such purpose.

#### Article 3.

#### Grain Handlers.

7940 § 3.2-4322. Definitions.

7941 As used in this article, unless the context requires a different meaning:

7942 "Grain" means corn (maize), wheat, rye, oats, barley, flaxseed, soybeans, and such other grains as  
7943 the usages of the trade may warrant and permit.

7944 "Handler" means a person who buys grain for resale as grain or grain products.

7945 § 3.2-4323. Commissioner authorized to require registration; forms.

7946 The Commissioner may require all handlers to register on forms prepared for that purpose. Such  
7947 forms shall require the handler to state his name, address, and the county or city where he shall weigh  
7948 and grade grain.

7949 § 3.2-4324. Regulations.

7950 The Board may adopt regulations relating to the handling of grain in the Commonwealth, including:

7951 1. The weighing devices, approved under the Virginia Weights and Measures Law (§ 5600 et seq.)  
7952 and the procedures employed to give accurate weights.

7953 2. The grading equipment that is acceptable in administering the United States Grain Standards Act  
7954 and the use of grading equipment to be used in determining the value of grain. Such use of such  
7955 equipment shall be pursuant to procedures employed by inspectors licensed under the United States  
7956 Grain Standards Act.

7957 3. Samples of lots graded by other than a Virginia licensed inspector and the lot discounted shall be  
7958 identity preserved for 24 hours.

7959 4. The keeping of records in accordance with good business practices.

7960 § 3.2-4325. Grain handlers to register if required by Commissioner.

7961 All persons before operating as a handler in the Commonwealth shall register with the  
7962 Commissioner.

7963 § 3.2-4326. Grain to be purchased from registered handlers.

7964 It is unlawful to buy grain for resale as grain or grain products unless bought by a handler  
7965 registered by the Commissioner.

7966 § 3.2-4327. Violation of article.

7967 Any person who violates any of the provisions of this article or regulations established by the Board  
7968 hereunder is guilty of a Class 1 misdemeanor.

#### CHAPTER 44.

#### BEEKEEPING.

7971 § 3.2-4400. Definitions.

7972 As used in this chapter, unless the context requires a different meaning:

7973 "Apiary" means any place where one or more colonies of bees are kept.

7974 "Appliance" means any apparatus, tool, machine, or other device used in the handling and  
7975 manipulating of bees, honey, wax, hives, and hive parts and shall include containers used in  
7976 transporting, processing, storing, or merchandising bees and bee products.

7977 "Bee" means the honeybee, *Apis mellifera* and genetic variations thereof, at any living stage; and  
7978 may include other hymenopterous insects that depend on pollen and nectar for food.

7979 "Bee diseases" means departures from a sound state of health of bees characterized by visible  
7980 symptoms including American foulbrood and any other diseases, insects, mites, or bee pests.

7981 "Bee equipment" means hives and hive parts including frames, supers, covers, bottom boards, and  
7982 beekeeping apparel.

7983 "Brood comb" means the assemblage of cells containing any living stage of bees at any time prior to  
7984 their emergence as adults.

7985 "Certificate of health" means a state-of-origin document prepared and signed by the State Apiarist or  
7986 other authorized person declaring the bees, bee equipment, appliances, apiaries, and honey houses to be  
7987 free of bee diseases.

7988 "Colony" means a queenright assemblage of social bees capable of reproducing.

7989 "Combless package" means a shipping container for transporting bees or queens.

7990 "Entry permit" means a state-of-destination document prepared by the State Apiarist or other  
7991 authorized person authorizing the entry of bee equipment, appliances, and bees on combs into the  
7992 Commonwealth.

- 7993 "Hive" means a box, skep, barrel, log gum, or other container used as a domicile for bees.
- 7994 "Honey house" means any building where honey for commercial use is extracted, graded, processed,
- 7995 packed, or stored.
- 7996 "Person" means the term as defined in § 1-230. The term also means any society.
- 7997 § 3.2-4401. Powers and duties of the Board.
- 7998 The Board may adopt regulations to:
- 7999 1. Suppress bee diseases by regulating the movement of bees and controlling or destroying disease
- 8000 reservoirs;
- 8001 2. Require apiary identification;
- 8002 3. Adopt colony strength standards for pollination services;
- 8003 4. Promote the sale and distribution of bees and their products; and
- 8004 5. Effectively administer and enforce this chapter.
- 8005 § 3.2-4402. State Apiarist.
- 8006 The Commissioner may appoint a State Apiarist with adequate experience and training in practical
- 8007 beekeeping. The State Apiarist shall promote the science of beekeeping by education and other means;
- 8008 inspect apiaries, beehives, and beekeeping equipment within the Commonwealth for bee disease; and
- 8009 perform other duties that may be required by regulation or law, including the inspection of honey
- 8010 houses for sanitation.
- 8011 § 3.2-4403. Duties of beekeepers.
- 8012 Beekeepers shall:
- 8013 1. Provide movable frames with combs or foundation in all hives used by them to contain bees,
- 8014 except for short periods, not to exceed the first spring honey flow, and to cause the bees in such hives
- 8015 to construct brood combs in such frames so that any of the frames may be removed from the hive
- 8016 without injuring other combs in such hive; and
- 8017 2. Securely and tightly close the entrance of any hive in apiaries not free from disease and make the
- 8018 hive tight so that robber bees cannot enter, leave, or obtain honey from the hives as long as the hives
- 8019 remain in a location accessible by honeybees.
- 8020 § 3.2-4404. Duty to notify the State Apiarist of diseased bees.
- 8021 Any person in the Commonwealth who is aware of diseased bees in his or other apiaries shall
- 8022 immediately notify the State Apiarist, giving the exact location of the diseased bees and other
- 8023 information as requested.
- 8024 § 3.2-4405. Entry permit required to bring bees and used bee equipment into Commonwealth;
- 8025 inspection.
- 8026 A. No person shall bring any bees on combs, empty used combs, used hives, or other used apiary
- 8027 appliances into the Commonwealth without first receiving an entry permit to do so from the State
- 8028 Apiarist. Entry permits shall be issued only upon receipt of satisfactory proof that the bees and other
- 8029 items are free from bee diseases. Specifically identifiable colonies must be brought into the
- 8030 Commonwealth within 60 days from the issuance of the entry permit.
- 8031 B. Bees brought into the Commonwealth shall be subject to inspection at any time.
- 8032 § 3.2-4406. Certificate of health to accompany bees in combless packages brought into
- 8033 Commonwealth.
- 8034 All bees in combless packages transported into the Commonwealth shall be accompanied by a
- 8035 certificate of health issued by the proper official of the place of origin.
- 8036 § 3.2-4407. Certificate of health to accompany bill of sale.
- 8037 No bees on combs, hives, used beekeeping equipment with combs, or appliances may be offered for
- 8038 sale without a certificate of health prepared by the State Apiarist for each specifically identifiable item.
- 8039 The certificate of health must accompany each bill of sale.
- 8040 § 3.2-4408. Rearing package bees and queens for sale.
- 8041 A. No person shall rear package bees or queens for sale without first applying to the State Apiarist
- 8042 for inspection at least once during each summer season.
- 8043 B. Upon the discovery of any bee diseases, the rearer or seller shall at once cease to ship bees from
- 8044 affected apiaries until the State Apiarist issues a certificate of health for such apiaries.
- 8045 C. No person engaged in rearing queen bees for sale shall use honey in the making of bee food for
- 8046 use in mailing cages.
- 8047 § 3.2-4409. Right of entry for inspection and enforcement.
- 8048 The Commissioner may enter any private or public premises during business hours, except private
- 8049 dwellings. The Commissioner shall have access to all apiaries and other places where bees, combs,
- 8050 beekeeping equipment, and appliances may be kept.
- 8051 § 3.2-4410. Measures to eradicate and control bee diseases; appeal.
- 8052 A. The State Apiarist shall examine or inspect the bees in the Commonwealth whenever they are
- 8053 suspected of being infected with bee diseases and, on request, shall inspect bees to be sold or to be

8054 transported interstate.

8055 B. If bees are found to be infected with bee diseases, the State Apiarist shall take suitable measures  
8056 to eradicate or control such diseases.

8057 C. If the owner of such diseased bees fails to take such steps as may be prescribed by the State  
8058 Apiarist to eradicate or control the disease, the State Apiarist shall destroy or treat the bees, hives, and  
8059 honey.

8060 D. The State Apiarist may prohibit the removal of bees, honey, wax, combs, hives, or other used  
8061 beekeeping equipment from any place where bees are known to be infected with bee diseases, until he  
8062 issues a certificate of health for such place.

8063 E. Within 10 days from the receipt of an order from the State Apiarist to destroy or treat his  
8064 diseased bees, hives, honey, or appliances, any owner of diseased bees may file a written appeal with  
8065 the Commissioner. Upon timely receipt of a written appeal under this section, the Commissioner shall  
8066 act upon the appeal in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et  
8067 seq.).

8068 § 3.2-4411. Abandoned apiaries.

8069 The State Apiarist may deem an apiary to be abandoned if: (i) the bees and hives show evidence of  
8070 a period of neglect exceeding one year; and (ii) the owner of the apiary has not been identified through  
8071 a reasonable search of available records. If the State Apiarist deems an apiary to be abandoned, he  
8072 shall certify his findings in a declaration of abandonment to the treasurer of the locality where the  
8073 apiary is located. The treasurer shall give notice of such certification to the last known owner of the  
8074 apiary and the owner of the land upon which the apiary is located by personal service, by posting at  
8075 last known residence, or by publication. If after 60 days, the owner or landowner has not laid claim to  
8076 the apiary, the treasurer may hold a sheriff's sale, issue a treasurer's deed to the successful bidder, and  
8077 deposit any proceeds into the general fund of the locality. If disposition is not made within 90 days of  
8078 the date of the declaration of abandonment, the State Apiarist may take possession of the apiary and  
8079 destroy the related bees, hives, and equipment.

8080 § 3.2-4412. Unsanitary conditions in honey houses.

8081 Whenever the State Apiarist determines that unsanitary conditions exist in any honey house, he shall  
8082 notify the operator or owner to remedy the condition within a reasonable time. Failure to correct the  
8083 unsanitary condition after notification is a violation of this chapter.

8084 § 3.2-4413. Costs of administering chapter.

8085 Normal costs of administering this law shall be borne by the Commonwealth. Costs for services,  
8086 products, or articles beyond the scope of the law are reimbursable and payable to the Treasurer of  
8087 Virginia by the persons affected. The Commissioner shall promptly credit reimbursements to the fund  
8088 from which originally expended.

8089 § 3.2-4414. Violation of chapter.

8090 Any person violating any of the provisions of this chapter or any order or regulation issued  
8091 hereunder, or interfering in any way with the Commissioner in the discharge of his duties is guilty of a  
8092 Class 1 misdemeanor.

8093

#### CHAPTER 45.

8094

#### GRADING, PACKING, AND MARKING OF APPLES.

8095 § 3.2-4500. Definitions.

8096 As used in this article, unless the context requires a different meaning:

8097 "Container" means any closed package of any description that is used to contain apples and includes  
8098 boxes, baskets, and bags of any size or material.

8099 "Packer" means any person who first packs apples in a container for shipment or sale.

8100 § 3.2-4501. Grades and standards.

8101 The Board shall establish and adopt official grades and standards for apples by which the quality,  
8102 quantity and size of the apples may be determined. Before establishing such official grades and  
8103 standards, the Board shall consult with the Board of Directors of the Virginia Horticultural Society and  
8104 the Board of Directors of the Virginia Apple Growers Association.

8105 § 3.2-4502. Marking containers; contents to conform to markings.

8106 It is unlawful for apples, except apples delivered for processing or packing or delivered to storage  
8107 for packing, to be sold, packed for sale, offered for sale or transported for sale, in containers, unless:

8108 1. Each such container bears conspicuously in plain words and figures on the outside, or on a  
8109 durable stuffer within and readily readable from the outside, showing the correct size, minimum quantity  
8110 and correct variety of the apples in the container, one of the official grades and one of the official  
8111 standards for apples established by the Board under this chapter, and the name and address of the  
8112 producer's or packer's business; and

8113 2. The apples in each container conform to the markings appearing on the container.

8114 § 3.2-4503. Packing in used containers.

8115 When apples are packed in used containers, any markings pertaining to previous contents of such

8116 containers shall be obliterated by the producer or packer and the markings required under this chapter  
8117 shall be substituted.

8118 § 3.2-4504. *Prima facie* evidence of being offered or transported for sale.

8119 When containers of apples are placed in transit for sale or delivery or delivered for storage, such  
8120 transit or delivery shall be *prima facie* evidence that the apples are offered or transported for sale.

8121 § 3.2-4505. Enforcement of chapter.

8122 The Commissioner may:

8123 1. Enter and inspect all places within the Commonwealth where apples are produced, packed or  
8124 stored for sale, shipped, delivered for shipment, offered or exposed for sale, or sold, and to inspect all  
8125 apples, containers and equipment found in any such places.

8126 2. Institute injunction proceedings for violations of any provision of this chapter or regulation  
8127 adopted hereunder in any circuit court in any county or city of the Commonwealth where apples may be  
8128 found improperly marked in violation of any provision of this chapter, either through the attorney for  
8129 the Commonwealth or otherwise.

8130 3. Prohibit in writing the movement in intrastate, interstate or foreign commerce of any apples found  
8131 improperly marked in violation of any provision of this chapter or regulation adopted hereunder until  
8132 such apples are properly marked and released in writing by the Commissioner.

8133 § 3.2-4506. Penalty for violation.

8134 A. Any person, except a contract or common carrier, who moves or causes to be moved any apples,  
8135 the movement of which has been prohibited in writing as provided in § 3.2-4505, is guilty of a Class 1  
8136 misdemeanor.

8137 B. Any person who violates any provision of this chapter is guilty of a Class 1 misdemeanor.

8138 CHAPTER 46.

8139 CONTROLLED ATMOSPHERE STORAGE OF APPLES AND PEACHES.

8140 § 3.2-4600. Definitions.

8141 As used in this chapter, unless the context requires a different meaning:

8142 "Controlled atmosphere storage" or "CA" means any storage warehouse consisting of one or more  
8143 rooms in any one facility in which atmosphere gases are controlled in their amount and in degrees of  
8144 temperature for the purpose of controlling the condition and maturity of fruit.

8145 "Fruit" means any apples and peaches.

8146 § 3.2-4601. Regulations.

8147 The Board may adopt regulations, after consultation with the Board of Directors of the Virginia  
8148 State Horticultural Society or the Virginia Apple Growers Association, that:

8149 1. Prescribe components of the atmosphere required including the maximum amount of oxygen that  
8150 may be retained in a sealed controlled atmosphere storage warehouse;

8151 2. Determine the length of time, not to be less than 60 days and not to exceed 10 months, and the  
8152 degrees of temperature at which fruit shall be retained in controlled atmosphere storage before they  
8153 shall be classified as having been stored in controlled atmosphere storage; and

8154 3. Prescribe grade and condition standards applicable to CA apples.

8155 § 3.2-4602. Operators of warehouses may register with Commissioner; expiration of registration.

8156 Any person engaging in the operation of a controlled atmosphere storage warehouse may register  
8157 with the Commissioner. Such registration shall expire on August 31 of each year.

8158 § 3.2-4603. Application for registration; when Commissioner to register applicant.

8159 A. Application for registration to operate a controlled atmosphere storage warehouse shall be on a  
8160 form prescribed by the Commissioner and shall include the following:

8161 1. The full name of the person applying for registration;

8162 2. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation,  
8163 the full name of each member of the firm or partnership or the name of the officers of the association  
8164 or corporation shall be given on the application;

8165 3. The principal business address of the applicant;

8166 4. The name of a person domiciled in the Commonwealth authorized to receive and accept service or  
8167 legal notices of all kinds;

8168 5. The storage capacity, by cubic capacity or volume, of each controlled atmosphere storage  
8169 warehouse the applicant intends to operate;

8170 6. The kind of fruits to be placed in controlled atmosphere storage; and

8171 7. Any other information prescribed by the Commissioner necessary to carry out the provisions of  
8172 this chapter.

8173 B. The Commissioner shall register an applicant if he determines that the applicant has satisfied the  
8174 requirements of this chapter and the regulations adopted hereunder.

8175 C. The Commissioner, when issuing a registration to an applicant, shall include a warehouse number  
8176 that shall be preceded by the letters "VA-CA."

- 8177 § 3.2-4604. Owner or buyer may apply for inspection and certification of fruits.  
 8178 Any owner or, with the consent of the owner, a proposed buyer of any fruits, subject to the  
 8179 provisions of this chapter may apply to the Commissioner for inspection and certification that such  
 8180 fruits meet the requirements provided for in this chapter or regulations adopted hereunder.
- 8181 § 3.2-4605. Fees.  
 8182 The Board shall prescribe the fees to be charged to the registrant or owner for the inspection and  
 8183 certification of any fruits subject to the provisions of this chapter or regulations adopted hereunder. In  
 8184 no case shall the fees exceed the fees charged for inspection of fruit not under CA storage. If the  
 8185 inspection fees payable under this chapter are not paid within 30 days from the date of billing, the  
 8186 Commissioner may withdraw inspection or refuse to perform any inspection or certification services for  
 8187 the person in arrears. The Commissioner may demand and collect inspection and certification fees prior  
 8188 to inspecting and certifying any fruits for such person.
- 8189 § 3.2-4606. Disposition of funds.  
 8190 All moneys collected under the provisions of this chapter for the inspection and certification of any  
 8191 fruits subject to the provisions of this chapter shall be handled and deposited in the manner provided  
 8192 for in subsection B of § 3.2-3400, for the handling of inspection and certification fees derived from the  
 8193 inspection of any agricultural products.
- 8194 § 3.2-4607. Fruit represented as exposed to controlled atmosphere storage to meet requirements of  
 8195 chapter.  
 8196 It is unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits  
 8197 represented as having been exposed to controlled atmosphere storage or to use any such terms or form  
 8198 of words or symbols of similar import unless such fruits have been stored in controlled atmosphere  
 8199 storage that complies with the requirements of this chapter or regulations adopted hereunder.
- 8200 § 3.2-4608. Inspection and certification of fruit by Commissioner.  
 8201 It is unlawful for any person to place or stamp the letters "CA" or a similar designation in  
 8202 conjunction with a number upon any container or subcontainer of any fruits, unless:  
 8203 1. The Commissioner has inspected such fruits and validated a certificate stating their condition, that  
 8204 they were stored in a warehouse registered under the provisions of this chapter and that they meet all  
 8205 other requirements of this chapter or regulations adopted hereunder; and  
 8206 2. A certificate number and certificate date is affixed to all shipping documents.
- 8207 § 3.2-4609. Denial, suspension or revocation of registration.  
 8208 The Commissioner may deny, suspend or revoke registration provided for in § 3.2-4602 after a  
 8209 hearing, in any case in which he finds that there has been a failure or refusal to comply with the  
 8210 provisions of this chapter or regulations adopted hereunder. All regulations, actions, and hearings for a  
 8211 denial, suspension or revocation of the registration shall be subject to the provisions of Chapter 40  
 8212 (§ 2.2-4000 et seq.) of Title 2.2.
- 8213 § 3.2-4610. Inspection certificate prima facie evidence of facts stated.  
 8214 Every inspection certificate issued by the Commissioner under the provisions of this chapter shall be  
 8215 received in all courts of the Commonwealth as prima facie evidence of the facts stated therein.
- 8216 § 3.2-4611. Evidence that fruits are offered or transported for sale.  
 8217 When packages of fruits are placed in transit for sale or delivery or delivered for storage, such  
 8218 transit or delivery shall be prima facie evidence that the fruits are offered or transported for sale.
- 8219 § 3.2-4612. Actions to enjoin violations.  
 8220 The Commissioner may bring an action to enjoin the violation or threatened violation of any  
 8221 provision of this chapter or any regulation adopted hereunder in the circuit court having jurisdiction in  
 8222 the county or city where such violation occurs or is about to occur, notwithstanding the existence of any  
 8223 other remedies of law.
- 8224 § 3.2-4613. Violations of chapter and regulations.  
 8225 Any person violating the provisions of this chapter or regulations adopted hereunder is guilty of a  
 8226 Class 1 misdemeanor.

8227 CHAPTER 47.  
 8228 SALE OF FARM PRODUCE.

8229 Article 1.

8230 General Provisions.

- 8231 § 3.2-4700. Definitions.  
 8232 As used in this chapter, unless the context requires a different meaning:  
 8233 "Director" means the Director of the Division of Marketing.  
 8234 "Division" means the Division of Marketing of the Department of Agriculture and Consumer  
 8235 Services.
- 8236 § 3.2-4701. Division of Marketing; administration; appointment of Director and assistants;  
 8237 responsibilities.  
 8238 A. The Division is hereby established within the Department, and shall be administered under the

8239 supervision of the Commissioner by the Director, who shall be qualified for the performance of his  
8240 duties by training and experience.

8241 B. The Division shall:

8242 1. Promote the economical handling, packing, storage, distribution, and sale of agricultural products  
8243 in the Commonwealth; and

8244 2. Assist producers and consumers in selling and purchasing agricultural products at a fair and  
8245 reasonable price.

8246 § 3.2-4702. Powers and duties of Director.

8247 In the administration of the Division, the Director, under the supervision of the Commissioner:

8248 1. Shall investigate: (i) the cost of food production and marketing; (ii) the market demand for the  
8249 products of Virginia farms; (iii) the proximity of producers to the most profitable markets for their  
8250 products; (iv) the transportation facilities; and (v) the most advantageous methods of packing, storing,  
8251 and standardizing agricultural products;

8252 2. Shall conduct analyses to determine whether the agricultural products of the Commonwealth are  
8253 being subjected to unfair competition from agricultural products or manufactured substitutes;

8254 3. May assist in the organization of cooperatives among producers and consumers, for the purpose  
8255 of promoting and conserving the interest of producers of agricultural products in the sale and  
8256 distribution of such products, and in the purchase of their necessary supplies;

8257 4. May cooperate with federal officials, national, district, and state committees and supervisory  
8258 bodies in enforcing codes and marketing agreements adopted under the federal Agricultural Adjustment  
8259 Act (7 U.S.C. § 1281 et seq.) or other similar acts of Congress;

8260 5. May enter into agreements with federal officials, national, district, or state committees or  
8261 supervisory bodies for carrying out the provisions of this section or the Federal Agricultural Adjustment  
8262 Act or other similar acts of Congress;

8263 6. May appoint, supervise, and dismiss as inspectors or representatives of the Division those  
8264 employees of his office as he may deem necessary for the enforcement and carrying out the purposes of  
8265 subdivisions 4 through 7; and

8266 7. May receive from the federal department or its subdivisions, national, district or state committees  
8267 or supervisory bodies, or from other sources, fees or moneys for carrying out the purposes of  
8268 subdivisions 4 through 7, deposit them in the state treasury, and expend such moneys for carrying out  
8269 the purposes of these subdivisions.

8270 § 3.2-4703. Cooperation of U.S. Department of Agriculture.

8271 In carrying out the provisions of this chapter, the Division shall endeavor to secure the cooperation  
8272 and assistance of the U.S. Department of Agriculture. It shall analyze: (i) the methods suggested by the  
8273 U.S. Department of Agriculture for the promotion of economical and efficient marketing of agricultural  
8274 products; and (ii) statistical information applicable to the marketing of Virginia agricultural products.  
8275 When it is advisable and not inconsistent with the requirements of this chapter or of any other law of  
8276 the Commonwealth, the Division shall endeavor to adopt any methods of marketing that may be  
8277 suggested by the U.S. Department of Agriculture.

8278 § 3.2-4704. Regulations.

8279 The Board may adopt any marketing agreement approved by federal officials under the federal  
8280 Agricultural Adjustment Act (7 U.S.C. § 1281 et seq.) and similar acts of Congress.

8281 § 3.2-4705. Division to disseminate information.

8282 The Division of Marketing shall gather and disseminate information on all subjects relating to the  
8283 marketing and distribution of Virginia agricultural products, and shall keep producers and consumers  
8284 informed of the demand and supply and at what markets the various agricultural products can be best  
8285 handled or procured. The Division shall: (i) publish periodical bulletins that provide the current market  
8286 prices for Virginia agricultural products in the principal markets of the Commonwealth, and in other  
8287 markets accessible for the disposition of such products; and (ii) when advisable, provide information as  
8288 to the available supplies of agricultural products the demand in several markets for such products. The  
8289 Division may also prepare and distribute bulletins describing the most efficient and economical methods  
8290 of standardization, storage, packing, transportation, and marketing of agricultural products. The  
8291 Division shall determine the sources of supply of agricultural products and prepare and publish lists of  
8292 the names and addresses of producers and consignors and supply this information to interested persons.

8293 § 3.2-4706. Finding markets for producers.

8294 When notified by producers that agricultural products produced in the Commonwealth cannot be  
8295 sold or will have to be sacrificed for lack of a ready market, the Division shall investigate and make  
8296 suggestions to the producers, and may assist the producers in any practicable manner in finding a  
8297 satisfactory market for the products in question.

8298 § 3.2-4707. Investigation and correction of improper practices.

8299 The Division shall investigate delays, improper conditions, overcharges, and unfair rates in the

8300 transportation of agricultural products, and may institute proceedings in the appropriate courts for the  
 8301 abatement or redress of such injuries; and may institute proper proceedings to prevent restraint of trade  
 8302 or unlawful combinations to fix prices.

8303 § 3.2-4708. Penalty.

8304 Any person violating any provision of this article, a regulation or marketing agreement adopted  
 8305 pursuant thereto, is guilty of a Class 3 misdemeanor.

8306 Article 2.

8307 Commission Merchants.

8308 § 3.2-4709. Definitions.

8309 As used in this article, unless the context requires a different meaning:

8310 "Auction market," "livestock auction market," "livestock sales ring," "livestock auction," or "livestock  
 8311 auction ring" means a place or establishment operated for compensation or profit as a private or public  
 8312 market, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received,  
 8313 held for sale or where livestock is sold or offered for sale either privately or at public auction.

8314 "Commission merchant" means any person, who: (i) operates an auction market; (ii) receives farm  
 8315 products for sale on commission or contracts with the producer for farm products sold on commission  
 8316 or for a fee; (iii) accepts in trust from the producer for the purpose of sale; (iv) sells or offers for sale  
 8317 on commission; (v) solicits consignments of any kind of farm products; or (vi) handles the account of or  
 8318 as an agent of the producer any kind of farm products. No person shall be deemed to be an agent of  
 8319 the producer unless a specific price has been agreed upon by both parties before shipment or delivery  
 8320 by the producer for resale.

8321 "Commission merchant" shall not include: (i) any cooperative corporation or association that is  
 8322 subject to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1; (ii) any association  
 8323 or organization of farmers, including produce exchanges, not incorporated under or subject to the  
 8324 provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, organized and maintained by  
 8325 farmers for mutual help in the marketing of their produce and not for profit; (iii) any person buying  
 8326 vegetables, viticulture, or horticultural farm products for the purpose of reselling these products in  
 8327 dried, canned, or other preserved form; (iv) the sale of farm produce at public auction by a licensed  
 8328 auctioneer, acting as the agent of another to whom such farm produce is consigned; (v) the sale by  
 8329 sheriffs and other officers and fiduciaries and court officials; (vi) seed sold at retail; or (vii) persons  
 8330 licensed pursuant to the provisions of Article 3 (§ 3.2-4738 et seq.) of this chapter.

8331 "Farm produce" or "farm products" means horticultural, viticulture, forestry, dairy, livestock, poultry,  
 8332 bee, and other products ordinarily produced on farms.

8333 "Licensee" means any person who has been granted a license to operate, conduct, or carry on the  
 8334 business of a commission merchant.

8335 § 3.2-4710. Certain activities exempt from article.

8336 The provisions of this article shall not apply to: (i) the premises of any butcher, packer, or processor  
 8337 who receives livestock exclusively for immediate slaughter; (ii) farm sales; (iii) sales by 4-H clubs; or  
 8338 (iv) sales by livestock breeders' associations or by exposition societies.

8339 § 3.2-4711. License required; application for license to be in writing; contents.

8340 A. Every person who operates, conducts, or carries on the business of a commission merchant shall  
 8341 obtain a license.

8342 B. Application for license shall be made to the Commissioner in writing, signed and sworn to by the  
 8343 applicant.

8344 C. The application shall include:

8345 1. The name of the locality where the business of commission merchant is to be conducted, the street  
 8346 and number of the building if practicable, and the nature of the products that will be handled by the  
 8347 applicant;

8348 2. If made by a partnership, the full names of each of the partners comprising the partnership, and  
 8349 their respective addresses, and the firm or trade name under which the business is to be conducted;

8350 3. If made by a corporation, whether it is domestic or foreign, the amount of its capital stock as  
 8351 provided in its articles of incorporation, the amount of its capital stock fully paid in, and the names of  
 8352 its officers and those persons authorized to receive and accept service of process and legal notices of all  
 8353 kinds for the applicant.

8354 D. If requested by the Commissioner, an applicant shall demonstrate his character, responsibility,  
 8355 and good faith in seeking to carry on a commission merchant's business within the Commonwealth.

8356 § 3.2-4712. Fee and bond to accompany license.

8357 Applications shall be accompanied by a license fee of \$10, and a good and sufficient bond, approved  
 8358 by the Commissioner, in the amount of \$3,000 for all applications other than for livestock auction  
 8359 markets, in which case the application, together with the fee, shall be accompanied by a bond in the  
 8360 sum of \$5,000, when the average daily gross commission business is \$5,000 or less, with \$1,000 added  
 8361 to the bond for each additional \$5,000 average daily gross commission business done for the previous



- 8362 year with a maximum bond of \$10,000 that entitles the applicant to a license to expire on December 31.
- 8363 § 3.2-4713. Applications for renewal licenses.
- 8364 Each licensee shall renew his license. The renewal license shall expire one year from the date of
- 8365 expiration of the old license. The renewal application shall be accompanied by evidence of payment of
- 8366 the renewal premium continuing the bond in full force and effect, and the payment of a fee of \$10 on or
- 8367 before the first day of January following the date of expiration of the previous license. All applications
- 8368 for renewal licenses shall be made in the same manner as application for original license.
- 8369 § 3.2-4714. Disposition of sums received for licenses.
- 8370 All sums received by the Commissioner for such license fees shall be paid into the state treasury to
- 8371 the credit of the general fund.
- 8372 § 3.2-4715. Certified copy of license; fee; posting of license during sale periods.
- 8373 A certified copy of an issued license may be obtained by the holder of the original upon payment of
- 8374 a fee of \$1, and the original or a certified copy of the license shall be posted during sale periods in a
- 8375 conspicuous place on the premises where the business is conducted.
- 8376 § 3.2-4716. Bond not required for certain auction sales of livestock.
- 8377 No bond shall be required of any person operating a livestock auction market or stockyard that has
- 8378 been posted by the U.S. Department of Agriculture and is being operated under and pursuant to the
- 8379 terms and provisions of the Packers and Stockyards Act of 1921 (42 Stat. 159), as amended.
- 8380 § 3.2-4717. Agreements with U.S. Department of Agriculture; powers and duties of Commissioner as
- 8381 to bonds filed with U.S. Department of Agriculture.
- 8382 The Commissioner may enter into agreements with the U.S. Department of Agriculture as are
- 8383 necessary to effectuate the purposes of the Packers and Stockyards Act of 1921 (42 Stat. 159), as
- 8384 amended. The Commissioner may act as trustee of the bonds or other security filed with the U.S.
- 8385 Department of Agriculture, and in such capacity the Commissioner may: (i) settle, allow or reject claims
- 8386 arising against the bonds or other security; (ii) rely on the investigative reports and recommendations of
- 8387 the U.S. Department of Agriculture; and (iii) use the administrative powers and processes of this article
- 8388 to settle claims. The Commissioner may institute and prosecute suits or actions in the name of the
- 8389 Commonwealth on behalf of claimants known and approved by the Commissioner in any appropriate
- 8390 court. The Commissioner may appeal a decision of any court that is contrary to any distribution
- 8391 recommended or authorized by him.
- 8392 § 3.2-4718. Execution and terms of bond; action thereon.
- 8393 The bond shall be executed by the applicant as principal and by a surety company qualified and
- 8394 authorized to do business in the Commonwealth as surety or by such personal surety as may be
- 8395 approved by the circuit court of the locality where the applicant resides or has his principal office. The
- 8396 bond shall be conditioned upon compliance with the provisions of this article and upon the faithful and
- 8397 honest handling of farm products in accordance with the terms of this article. The bond shall be to the
- 8398 Commonwealth in favor of every consignor of farm products. Any consignor of farm products claiming
- 8399 to be injured by the fraud, deceit or negligence of any commission merchant may bring action upon the
- 8400 bond against either the principal, or the surety, or both in an appropriate court to recover the damages
- 8401 caused by such fraud, deceit or negligence, or the failure to comply with the provisions of this article,
- 8402 or to make prompt and accurate settlement with the consignor.
- 8403 § 3.2-4719. Duties and powers of Commissioner with respect to bonds.
- 8404 The Commissioner may accept the proceeds from any bond and deposit the proceeds in the state
- 8405 treasury at interest in favor of the bond claimants. The Commissioner may institute and prosecute suits
- 8406 or actions in the name of the Commonwealth on behalf of claimants approved by him in any
- 8407 appropriate court for any purpose in connection with the collection or distribution of the bond or its
- 8408 proceeds. It shall be the duty of any person having a claim against a commission merchant to notify the
- 8409 Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has
- 8410 received such notice and believes the claim is valid. If the Commissioner believes the claim to be
- 8411 invalid, he shall notify the claimant. The claimant shall then have his remedy pursuant to § 3.2-4718.
- 8412 The Commissioner may appeal a decision of any court that is contrary to any distribution recommended
- 8413 or authorized by him.
- 8414 § 3.2-4720. Schedule of commissions and charges to be filed.
- 8415 The applicant shall file with the Commissioner at the time of furnishing the bond a schedule of his
- 8416 maximum commissions and charges for service in connection with the produce handled on account of or
- 8417 as agent for the parties. Such commissions and charges shall not be changed for one year thereafter,
- 8418 except by a written contract between the commission merchant and the consignors of farm products. A
- 8419 person operating a livestock auction market or stockyard that has been posted by the U.S. Department
- 8420 of Agriculture and is being operated pursuant to the provisions of the Packers and Stockyards Act of
- 8421 1921 (42 Stat. 159), as amended, may change his schedule of maximum commissions and charges if
- 8422 such changes are filed with the U.S. Department of Agriculture and are approved. These changes shall

8423 *be posted with the Commissioner.*

8424 *§ 3.2-4721. Investigation of transactions by Commissioner.*

8425 *The Commissioner, upon the verified complaint of any interested party shall, or upon his own motion*  
8426 *may, investigate:*

8427 *1. Any transaction involving solicitation, receipt, sale, or attempted sale of farm products by any*  
8428 *person acting or attempting to act as a commission merchant;*

8429 *2. The failure of any commission merchant to make proper and true account of sales and settlement*  
8430 *as required in this article;*

8431 *3. Any transaction in which produce consigned to a commission merchant is disposed of to a person*  
8432 *composed substantially of the same persons as stockholders, members, or others, who compose the*  
8433 *commission merchant;*

8434 *4. The intentional making of false statements by a commission merchant as to condition, grade, or*  
8435 *quality of any farm products received or in storage;*

8436 *5. The intentional making of false statements by a commission merchant as to market condition;*

8437 *6. The failure of any commission merchant to make payment for farm products within the time*  
8438 *required by this article; or*

8439 *7. Any other injurious transaction arising out of the sale of farm produce on commission.*

8440 *§ 3.2-4722. Complaint to Commissioner by consignor; Commissioner's action.*

8441 *A. When a consignor of farm products to a commission merchant files a complaint with the*  
8442 *commission merchant within 90 days after date of sale, and has failed to obtain a satisfactory settlement*  
8443 *of the complaint within 10 days after the filing of the complaint, a complaint setting forth the facts may*  
8444 *be filed with the Commissioner, who shall undertake a settlement of the matter.*

8445 *B. If the Commissioner is unable to settle the matter to the satisfaction of the parties involved, within*  
8446 *a reasonable time, he shall, after giving the parties at least five days' notice as to time and place,*  
8447 *proceed to hear evidence concerning the matter. The hearing shall occur in the city or town where the*  
8448 *business of the commission merchant is located or where the transaction complained of occurred, or at*  
8449 *the option of the parties, in such other place as they may mutually agree. The Commissioner shall either*  
8450 *dismiss the complaint or enter an order against the commission merchant to afford the consignor relief.*  
8451 *Any such order shall be complied with within the time specified by the Commissioner but shall not be*  
8452 *less than five days.*

8453 *§ 3.2-4723. Right of entry; administration of oaths; testimony.*

8454 *The Commissioner may:*

8455 *1. Conduct investigations relative to the complaint or matter being investigated, and he shall have at*  
8456 *all times unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in*  
8457 *which any farm products are kept, stored, handled, or transported;*

8458 *2. Administer oaths and take testimony, and issue subpoenas requiring the attendance of witnesses*  
8459 *before him, together with all books, memoranda, papers, and other documents, articles or instruments;*  
8460 *and*

8461 *3. Compel the disclosure by witnesses of all facts known to them relative to the matters under*  
8462 *investigation.*

8463 *§ 3.2-4724. Grounds for refusal or revocation of license.*

8464 *The Commissioner may refuse to grant a license, delay the issuance of a license, or revoke any*  
8465 *license when he finds that:*

8466 *1. A money judgment that has been entered against a commission merchant has not been satisfied;*

8467 *2. False, fraudulent, or improper charges or returns have been made by the licensee for the*  
8468 *handling, sale, or storage of farm products, or for the rendering of any related service;*

8469 *3. The licensee has failed to render a true account of sales, or to settle promptly and within the time*  
8470 *and in the manner required by this article;*

8471 *4. The licensee has made false or misleading statements as to the grade, condition, quality or*  
8472 *quantity of farm products received, handled, stored or held by him for sale on commission;*

8473 *5. The licensee has made false or misleading statements as to market conditions;*

8474 *6. There has been a combination to fix prices;*

8475 *7. The licensee has, directly or indirectly, purchased for his or its own account farm products*  
8476 *received by him or it, upon consignment, without prior authority from consignor in writing and at a*  
8477 *fixed price agreed to by the consignor. This subdivision shall not apply to operators of livestock auction*  
8478 *markets who are prohibited from purchasing consigned livestock under the federal Packers and*  
8479 *Stockyards Act of 1921 (42 Stat. 159), as amended;*

8480 *8. The licensee has made fictitious sales or has been guilty of collusion to defraud the consignor;*

8481 *9. The licensee has reconsigned the farm products to another person without first obtaining the*  
8482 *written consent of the consignor or written notice has not been given by the licensee to consignor that*  
8483 *all or a part of the shipment was reconsigned;*

8484 *10. The licensee sells farm products consigned to him or it, to another person owned or controlled*

8485 by the licensee, or in which the licensee may have a financial or other interest, either directly or  
 8486 indirectly, and no notice has been given, in writing, to the consignor by the licensee that all or a part  
 8487 of such shipment was sold to a person in which the licensee has a financial or other interest;

8488 11. The licensee was intentionally guilty of fraud or deception in the procurement of the license;

8489 12. The licensee has failed to file with the Commissioner a schedule of his maximum commissions  
 8490 and other charges for services for the produce handled on account of or as agent of another as  
 8491 prescribed in this article, prior to the first day of February of each year;

8492 13. The licensee has failed to obey and comply with any order of the Commissioner entered pursuant  
 8493 to the provisions of subsection B of § 3.2-4722 within the time specified in such order, or in the case of  
 8494 an appeal within 10 days of the time the Commissioner's order became final;

8495 14. The licensee has failed to comply with any assurance the Commissioner has required pursuant to  
 8496 subsections C and D of § 3.2-4711; or

8497 15. The licensee, his agents, contractors, or employees are guilty of violating any provision of this  
 8498 section.

8499 § 3.2-4725. Publication of revocation.

8500 When a license is revoked, a notice of the revocation and the reason for the revocation shall be  
 8501 published once a week for two successive weeks in one or more daily papers selected by the  
 8502 Commissioner and the Department shall post notice of the revocation on its website for a period of two  
 8503 weeks from the date of the revocation.

8504 § 3.2-4726. Failure to comply with orders of Commissioner constitutes contempt.

8505 All parties disobeying the orders or subpoenas of the Commissioner are guilty of contempt and shall  
 8506 be certified to an appropriate court for punishment.

8507 § 3.2-4727. Copies of papers in Commissioner's office as prima facie evidence.

8508 Copies of all records, inspection certificates, certified reports and all papers on file in the office of  
 8509 the Commissioner shall be prima facie evidence of the matter contained.

8510 § 3.2-4728. Appeal from orders and actions of Commissioner.

8511 Any action of the Commissioner: (i) entering any order pursuant to subsection B of § 3.2-4722; (ii)  
 8512 refusing to grant a license; (iii) revoking a license already granted to a commission merchant; or (iv)  
 8513 refusing to renew a license, shall be subject to the right of appeal in accordance with the provisions of  
 8514 the Administrative Process Act (§ 2.2-4000 et seq.).

8515 § 3.2-4729. Records to be kept by commission merchant.

8516 Every commission merchant, having received any farm products for sale on commission, shall  
 8517 promptly maintain a complete and true record, showing in detail the following with reference to the  
 8518 handling, sale, or storage of such farm products:

8519 1. The name and address of the consignor;

8520 2. The date received;

8521 3. The condition, grade, and quantity on arrival;

8522 4. The date of such sale for the account of the consignor;

8523 5. The sale price;

8524 6. An itemized statement of the charges to be paid by the consignor in connection with the sale;

8525 7. A lot number or other identifying mark that shall appear on all sales tags or tickets or on any  
 8526 other essential records needed to show the sale price of the products; and

8527 8. Records of auction sales of farm produce or farm products, including sales tags, tickets, or bills,  
 8528 which shall be sequentially numbered and each such sequentially numbered record shall be properly  
 8529 accounted for in the operations of the commission merchant. Any record that is altered shall bear the  
 8530 full signature of the person authorized to make, and who is responsible for, the alteration.

8531 § 3.2-4730. Detailed statements shall be kept of claims for overcharges or damages filed by  
 8532 commission merchant for consignor.

8533 A detailed statement shall be kept of the filing of any claim that has or may be filed by the  
 8534 commission merchant against any person for overcharges or for damages resulting from the injury or  
 8535 deterioration of farm products by the act, neglect, or failure of such person. Such records shall be open  
 8536 for inspection by the Commissioner and the consignor of farm products for whom such claim is made.  
 8537 The money returns, if any, collections, or damages received by the commission merchant for and on  
 8538 behalf of consignor of farm products by reason of the overcharges, damages or deterioration shall  
 8539 immediately be paid to the consignor of farm products less charges for collection, in accordance with  
 8540 the schedule of charges filed under § 3.2-4720.

8541 § 3.2-4731. Record and account, together with remittance for each sale, to be delivered to consignor.

8542 A copy of the record and account of sales of farm products, together with remittances in full of the  
 8543 amount realized by such sales, less the agreed upon commissions and other charges, shall be delivered  
 8544 to the consignor upon the completion of the sale. All moneys received by the commission merchant in  
 8545 payment for any consignment of farm products, less the agreed upon commission and other charges,

8546 shall be paid to the consignor within 10 days after receipt of the moneys by the commission merchant,  
8547 unless otherwise agreed in writing. The names and addresses of purchasers need not be given unless  
8548 demanded in cases of complaint.

8549 § 3.2-4732. Copies of records to be kept by commission merchant.

8550 Every commission merchant shall retain a copy of all records, including sales tags or tickets,  
8551 account of sales, or other records covering each transaction for a period of three years from the date of  
8552 the transaction. The copy shall at all times be available for, and open to, confidential inspection by the  
8553 Commissioner, and the interested consignor or his authorized representative.

8554 § 3.2-4733. Certificate establishing condition, quality, and grade to be furnished by Commissioner in  
8555 event of dispute.

8556 If there is a dispute or disagreement between a consignor and a commission merchant arising at the  
8557 time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or  
8558 consignment of farm products, the Commissioner shall furnish, upon the payment by the requesting party  
8559 of the necessary expenses, a certificate establishing the condition, quality, grade, pack, quantity or  
8560 weight of such lot, shipment, or consignment. The certificate shall be prima facie evidence in all courts  
8561 of the Commonwealth as findings at the time such inspection was made. The burden of proof shall be  
8562 upon the commission merchant to prove the correctness of his accounting as to any transaction that may  
8563 be questioned.

8564 § 3.2-4734. Duty of attorney for the Commonwealth.

8565 It shall be the duty of the attorney for the Commonwealth to prosecute all violations of this article.

8566 § 3.2-4735. Venue.

8567 Civil suits and criminal prosecutions arising by virtue of any provision of this article may be  
8568 commenced and tried in: (i) the city or county where the products were received by the commission  
8569 merchant; (ii) the city or county where the principal place of business of the commission merchant is  
8570 located within the Commonwealth; or (iii) the city or county where the violation occurred.

8571 § 3.2-4736. License required.

8572 A. It is unlawful for any person to act as, operate, or carry on the business of a commission  
8573 merchant without first obtaining a license.

8574 B. Any person who violates this section is guilty of a Class 1 misdemeanor.

8575 § 3.2-4737. Offenses and punishment.

8576 Any person who commits any of the following acts is guilty of a Class 1 misdemeanor:

8577 1. Imposes false charges for handling or for services in connection with farm products;

8578 2. Fails to account promptly, correctly, fully and properly and to make settlement as provided in this  
8579 article;

8580 3. Makes false and misleading statements as to market conditions with the intent to deceive;

8581 4. Makes fictitious sales or collusion to defraud the consignor, or enters into any combination to fix  
8582 prices;

8583 5. Directly or indirectly purchases for his or its own account, farm products, received by him or it  
8584 on consignment without prior authority from the consignor in writing. This subsection shall not apply to  
8585 the operators of livestock auction markets who are prohibited from purchasing consigned livestock under  
8586 the federal Packers and Stockyards Act of 1921 (42 Stat. 159), as amended;

8587 6. Intentionally makes false statements as to grade, condition, markings, quality, or quantity of farm  
8588 products shipped or packed;

8589 7. Reconsigns farm products as have been consigned to him to another person, unless consent of the  
8590 consignor has been first obtained in writing, or notice given in writing to the consignor by the licensee  
8591 that all or a part of such shipment was reconsigned;

8592 8. Sells farm products consigned to him to another person owned or controlled by him, or in which  
8593 the licensee may have a financial or other interest, either directly or indirectly, unless notice is given, in  
8594 writing, to the consignor by the commission merchant that all or a part of such shipment was sold to a  
8595 person in which the licensee has a financial or other interest;

8596 9. Fraudulently or deceptively obtains a license;

8597 10 Fails or neglects to give written notice immediately to the Commissioner and the surety on the  
8598 bond of the commission merchant, of any changes or alterations in the style, name or personnel of the  
8599 person to whom such license has been issued; or

8600 11. Fails to comply with the provisions of this article.

8601 Article 3.

8602 Dealers in Agricultural Produce.

8603 § 3.2-4738. Definitions.

8604 As used in this article, unless the context requires a different meaning:

8605 "Agricultural produce" means fruits and vegetables.

8606 "Bond" means a bond executed by a surety company licensed to do business in the Commonwealth.

8607 "Buying brokerage transaction" means a transaction in which the dealer acts as agent for the grower

8608 *in the purchase of agricultural produce at the day's price for the agricultural produce purchased in the*  
8609 *transaction.*

8610 *"Cash buyer" means any person who obtains from the producer, or his representative, title,*  
8611 *possession or control of any agricultural produce or contracts for the title, possession or control of any*  
8612 *agricultural produce, and who buys any agricultural produce by paying to the producer at the time of*  
8613 *obtaining possession or control, or at the time of contracting for the title, possession or control of any*  
8614 *agricultural produce, the agreed price of such agricultural produce in coin or currency, certified checks,*  
8615 *cashier's checks or drafts issued by a bank.*

8616 *"Consignment" means any transfer of agricultural produce by the seller to the custody of another*  
8617 *person who acts as the agent for the seller for the purpose of selling such agricultural produce.*

8618 *"Day's price" means the market price of any agricultural produce on a given day as determined by*  
8619 *the U.S. Department of Agriculture and published by the Division.*

8620 *"Dealer" means any person who buys, sells, solicits for sale, processes for sale or resale, resells,*  
8621 *exchanges, negotiates, purchases or contracts for processing or transfers any agricultural produce of a*  
8622 *producer. The term shall exclude: (i) any person operating solely on a commission basis in Virginia as*  
8623 *a licensed commission merchant under the provisions of Article 2 of this chapter; (ii) farmers or groups*  
8624 *of farmers selling agricultural produce grown by them; (iii) any person who operates strictly as a cash*  
8625 *buyer; (iv) any processor who processes agricultural produce within Virginia; and (v) any person who*  
8626 *buys agricultural produce for wholesale or retail in Virginia.*

8627 *"Grower's agent transaction" means a transaction or series of transactions in which the dealer*  
8628 *agrees to sell the entire crop produced by one grower during one season, at a price to be agreed upon*  
8629 *between the dealer and the grower.*

8630 *"Joint account transactions" means a transaction between a dealer and grower in which the dealer*  
8631 *pays the grower based on the price for which the agricultural produce sells in relation to the price*  
8632 *agreed upon between the dealer and grower.*

8633 *"Processor" means any person operating any plant in the Commonwealth that freezes, dehydrates,*  
8634 *cans, or otherwise changes the physical form or characteristics of agricultural produce.*

8635 *"Producer" means any person who produces agricultural produce in Virginia.*

8636 *§ 3.2-4739. License required; application for license and license fee; license renewals; list of dealers.*

8637 *A. Every dealer shall obtain a license to operate and conduct business.*

8638 *B. Such persons shall on or before May 1 of each year file a written application for a license with*  
8639 *the Commissioner for the licensing year of May 1 to April 30. Each dealer shall pay a license fee of*  
8640 *\$50 per licensing year. Each license shall expire on April 30 of the licensing year for which the license*  
8641 *was issued. The license shall be valid through May 31 of the next licensing year or until issuance of the*  
8642 *renewal license, whichever occurs first, if the holder shall have filed a renewal application and a new*  
8643 *bond or a continuation certificate continuing his current bond with the Commissioner on or before April*  
8644 *30 of the licensing year for which the Commissioner issued the license Any dealer proposing to transact*  
8645 *business within the Commonwealth who fails to file such written application for a license and pay the*  
8646 *licensing fee on or before May 1 shall pay a \$50 late fee in addition to the license fee. Any person who*  
8647 *engages in business as a dealer before obtaining a license shall be subject to a \$250 penalty, in*  
8648 *addition to the license fee and the late fee.*

8649 *C. The application for a license shall be on a form furnished or approved by the Commissioner and*  
8650 *shall contain the following information along with such other information as the Commissioner shall*  
8651 *require on the form:*

8652 *1. The name and address of the applicant and that of its local agent, if any, and the location of its*  
8653 *principal place of business within the Commonwealth;*

8654 *2. The kinds of agricultural produce the applicant proposes to handle; and*

8655 *3. The type of produce business proposed to be conducted.*

8656 *D. Each licensee shall renew his licenses on or before May 1 of each year for the licensing year*  
8657 *May 1 to April 30. The licensee shall make application to the Commissioner on a form furnished or*  
8658 *approved by the Commissioner and the licensee is subject to the provisions of subsection B.*

8659 *E. The Commissioner may publish a list of dealers licensed under this article.*

8660 *§ 3.2-4740. Bond required.*

8661 *Each application shall be accompanied by a good and sufficient bond in the minimum sum of \$1,000*  
8662 *or in such greater amount as is equal to the maximum amount of gross business the applicant does in*  
8663 *any month in the Commonwealth during the preceding licensing year, but in no event shall the amount*  
8664 *of bond required exceed \$40,000.*

8665 *§ 3.2-4741. Execution, terms and form of bond; action on bond.*

8666 *A. The bond shall be executed by the applicant as principal and by a surety company authorized and*  
8667 *qualified to do business in the Commonwealth as surety. The applicant shall file on or before May 1 of*  
8668 *each licensing year a copy of the bond with the Commissioner and the Commissioner shall be*

8669 designated as the trustee of this bond. If the bond is not filed by the due date, and if the applicant  
 8670 notifies the Commissioner that the bond application is in process and furnishes the Commissioner a  
 8671 copy of the dated bond application, the Commissioner may grant a grace period of 15 working days for  
 8672 the applicant to file the bond without penalty. Any applicant who fails to file a bond by the 15th day of  
 8673 the grace period, shall be subject to all applicable late fees and penalties as stated in §§ 3.2-4739 and  
 8674 3.2-4751 before a license will be issued.

8675 B. The bond shall be upon a form prescribed or approved by the Commissioner and shall be  
 8676 conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all  
 8677 agricultural produce purchased, handled or sold by the dealer. Any producer claiming to be injured by  
 8678 the nonpayment, fraud, deceit or negligence of any dealer may bring action upon the bond against the  
 8679 principal, or the surety, or both in an appropriate court.

8680 § 3.2-4742. Duties and powers of Commissioner with respect to bonds.

8681 The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the  
 8682 proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner may  
 8683 institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants  
 8684 known and approved by him in any appropriate court for any purpose in connection with the collection  
 8685 or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a  
 8686 produce dealer to notify the Commissioner of his claim. The Commissioner shall have no duty to  
 8687 prosecute any claim unless he has received notice and believes the claim is valid. If the Commissioner  
 8688 believes the claim is invalid, he shall notify the claimant. The claimant shall then have his remedy  
 8689 pursuant to § 3.2-4741. The Commissioner may appeal a decision of any court that is contrary to any  
 8690 distribution recommended or authorized by him.

8691 § 3.2-4743. Agricultural Dealers Fund established; disposition of funds.

8692 There is hereby created in the state treasury a special nonreverting fund to be known as the  
 8693 Agricultural Dealers Fund, hereafter referred to as "the Fund." The Fund shall be established on the  
 8694 books of the Comptroller. All moneys received by the Commissioner for license fees, license renewals,  
 8695 late fees, and penalties shall be paid into the state treasury and credited to the Fund. Interest earned on  
 8696 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,  
 8697 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall  
 8698 remain in the Fund. The Fund shall be used for the enforcement and administration of this article.  
 8699 Disbursements from the Fund shall be made by the State Comptroller at the written request of the  
 8700 Commissioner.

8701 § 3.2-4744. Records to be kept by dealers.

8702 Every dealer that has received any agricultural produce from a producer shall keep a complete and  
 8703 true record and retain it for three years, showing in detail the following with reference to the handling  
 8704 or sale of such agricultural produce, along with any other information as the Commissioner may require  
 8705 as outlined in the record inspection form:

- 8706 1. The name and address of the producer;
- 8707 2. The date received;
- 8708 3. The condition, grade (if officially graded), and quantity on receipt;
- 8709 4. The date of resale or transfer of the produce to another; and
- 8710 5. The sale price.

8711 § 3.2-4745. Copies of contracts to be filed with Commissioner.

8712 Copies of any contract between any producer and dealer or between any dealer and buyer made in  
 8713 advance of the harvesting season to supply agricultural produce shall be filed with the Commissioner  
 8714 within 10 days of the signing of such contract.

8715 § 3.2-4746. Commissioner's authority to inspect.

8716 A. Upon the complaint of any person, the Commissioner may inspect the books and records of any  
 8717 licensed dealer at any time during operating hours and shall have free access to the place where the  
 8718 business is operated.

8719 B. Upon the complaint of any person or upon his own initiative, the Commissioner may inspect the  
 8720 books and records of any person, other than a licensed dealer, who solicits, or attempts to solicit,  
 8721 receipt, sale, or transfer of agricultural produce. The Commissioner shall conduct such inspections at  
 8722 any time during operating hours. The Commissioner shall have the right of access to the place where  
 8723 the person's business is operated, or the place where his books and records are kept.

8724 § 3.2-4747. Refusal or revocation of license.

8725 A. The Commissioner may refuse to grant a license, delay the issuance of a license, or revoke or  
 8726 suspend any license already granted when he finds that the dealer:

- 8727 1. Has not satisfied a money judgment entered against him;
- 8728 2. Has failed to promptly and properly account or to promptly and properly pay for agricultural  
 8729 produce;
- 8730 3. Has made a false or misleading statement as to market conditions or the service rendered;

- 8731 4. Has perpetrated a fraud or engaged in deceit in procuring the license;  
 8732 5. Has engaged in any fraudulent or deceitful practices in his dealings with producers; or  
 8733 6. Has failed to comply with any provisions of this article or any regulations adopted by the Board.  
 8734 B. For the purposes of this section the terms:  
 8735 "Promptly and properly account," except when otherwise specifically agreed upon in writing by the  
 8736 parties, means providing a complete and true accounting: (i) in connection with buying brokerage  
 8737 transactions, within 24 hours after the date of delivery of the agricultural produce to their first  
 8738 destination; (ii) in connection with consignment or joint account transactions, within 10 days after the  
 8739 date of final sale of each shipment. However, if a grower's agent, while conducting a grower's agent  
 8740 transaction, or a shipper distributes individual lots of produce for or on behalf of others, his accounting  
 8741 shall be made within five days after the date he is paid by the purchaser or receives the accounting on  
 8742 consigned or joint account transactions. If a grower's agent, while conducting a grower's agent  
 8743 transaction, or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on  
 8744 behalf of others, he shall make accountings within seven days following shipment by the dealer; and (iii)  
 8745 in connection with a consignment or joint account transaction, within 10 days after the date of receipt  
 8746 of payment of a carrier claim filed. Nothing in this section shall prohibit cooperative associations from  
 8747 accounting to their members on the basis of seasonal pools or other arrangements provided by their  
 8748 regulations or bylaws.  
 8749 "Promptly and properly pay" means payment within 30 days of the receipt of the produce by the  
 8750 dealer, unless a written agreement signed by both parties expressly provides or permits otherwise. In the  
 8751 case of joint transactions, if the produce sells at or for less than the agreed price, the dealer pays the  
 8752 agreed price to the grower. If the produce sells for more than the agreed price, the dealer shall pay to  
 8753 the grower one-half of the difference between the sale price and the agreed price.  
 8754 § 3.2-4748. Hearing before the Commissioner.  
 8755 Before the Commissioner refuses or revokes a license, the applicant or licensee shall have the right  
 8756 to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).  
 8757 § 3.2-4749. Commissioner may enjoin; Attorney General may prosecute.  
 8758 The Commissioner may bring an action to enjoin the violation or threatened violation of any  
 8759 provision of this article, or any regulation adopted hereunder, in the circuit court of the city or county  
 8760 where the violation occurs or is about to occur. If the violation affects more than one locality, the  
 8761 action may be brought in the Circuit Court of the City of Richmond. The Commissioner may request  
 8762 either the attorney for the Commonwealth or the Attorney General to bring action under this section.  
 8763 The Attorney General is authorized to prosecute any violation of this article.  
 8764 § 3.2-4750. Operating without a license.  
 8765 It is unlawful for any dealer to operate and conduct a business without first having obtained a  
 8766 license.  
 8767 § 3.2-4751. Penalty for violation of article.  
 8768 Any person who intentionally violates any provision of this article or regulations promulgated  
 8769 hereunder is guilty of a Class 1 misdemeanor.  
 8770 § 3.2-4752. Reciprocal agreements with other states and federal government.  
 8771 The Commissioner may enter into reciprocal agreements with appropriate officials of other states or  
 8772 of the federal government for the purpose of exchanging any information of violations of this article or  
 8773 laws of other states or the federal government that have similar purposes as this article.  
 8774 Article 4.  
 8775 Dealers in Grain Products.  
 8776 § 3.2-4753. Definitions.  
 8777 As used in this article, unless the context requires a different meaning:  
 8778 "Cash buyer" means any person who pays the producer, or his representative, at the time of  
 8779 obtaining title, possession or control of grain, the agreed price of such grain in coin or currency,  
 8780 certified checks, cashier's checks, or drafts issued by a bank.  
 8781 "Contract" means a binding agreement between the grain dealer and the producer that describes the  
 8782 terms and conditions of the delivery of grain and the purchase price.  
 8783 "Deferred payment" means that the purchase price for grain delivered by the producer is fixed and  
 8784 specified in the contract, but payment is not received by the producer until a mutually agreed upon  
 8785 subsequent date.  
 8786 "Full market value" means the value recognized as the average weekly price per bushel for the  
 8787 Commonwealth as quoted by the Department.  
 8788 "Grain" means grains including corn (maize), wheat, rye, oats, barley, flaxseed, soybeans, and  
 8789 sunflower.  
 8790 "Grain bank" means grain owned by a producer and held temporarily by the dealer for use in the  
 8791 formulation of feed and returned to the producer on demand as feed or whole grain.

8792 "Grain dealer" means any person who buys, solicits for sale or resale, processes for sale or resale,  
8793 contracts for storage or exchange, or transfers grain of a Virginia producer. The term shall exclude  
8794 farmers or groups of farmers buying grain for consumption on their farms.

8795 "Grain exchange" means grain owned by a producer and held temporarily by the dealer for use in  
8796 the formulation of processed flour to be returned to the producer on demand as flour or whole grain.

8797 "Loss" means any monetary loss to a producer as a result of doing business with a dealer that shall  
8798 include bankruptcy, embezzlement, theft or fraud.

8799 "Price later" means that the actual purchase price is not fixed at the time of delivery, but allows the  
8800 producer to choose a bid price on any business day during a stated time period as agreed between the  
8801 parties.

8802 "Producer" means any person in Virginia who produces grain.

8803 "Storage" or "holding" means any method by which grain owned by another is held for the owner by  
8804 a person who is not the direct owner, except for transportation thereof.

8805 § 3.2-4754. License required; application for license or renewal.

8806 A. No person shall act as a grain dealer without first having obtained a license.

8807 B. Every grain dealer proposing to transact business within the Commonwealth shall annually on or  
8808 before January 1, file a written application for a license or for the renewal of a license with the  
8809 Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the  
8810 following information and such other relevant information as the Commissioner shall require:

8811 1. The name and address of the applicant and that of its local agent or agents, if any, and the  
8812 location of its principal place of business within the Commonwealth;

8813 2. The kinds of grain the applicant proposes to handle; and

8814 3. The type of grain business proposed to be conducted.

8815 § 3.2-4755. License and renewal fee; bond or irrevocable letter of credit required; exemption.

8816 A. All applications a for license or license renewal shall be accompanied by a license fee of \$40,  
8817 \$10 for each branch location and agent, and a good and sufficient bond in an amount of \$2,000 or an  
8818 amount equal to the maximum amount of gross business done in any month in the Commonwealth  
8819 during the preceding year by the applicant, whichever is greater, but in no event shall the amount of  
8820 bond required exceed \$40,000. An irrevocable letter of credit for the full amount of required bond may  
8821 be submitted in lieu of a surety bond. A person, who upon written request shows proof satisfactory to  
8822 the Commissioner that he is a cash buyer, shall be exempted from the bonding or irrevocable letter of  
8823 credit requirements. The exemption shall be granted within 20 days of the receipt of the exemption  
8824 request, unless the Commissioner requests the dealer to provide additional necessary information or  
8825 unless the request is denied.

8826 B. Any licensed grain dealer who fails to apply and qualify for the renewal of a license on or before  
8827 the date of expiration, shall pay a penalty of \$25, which shall be added to the original license fee and  
8828 shall be paid by the applicant before the renewal may be issued.

8829 § 3.2-4756. Execution, terms and form of bond or irrevocable letter of credit; action on bond or  
8830 irrevocable letter of credit; investigation of complaints.

8831 The bond shall be executed by the applicant as principal and by a surety company authorized and  
8832 qualified to do business in the Commonwealth as surety. An irrevocable letter of credit may be issued  
8833 on such terms as the Commissioner may require. The Commissioner shall be designated as the trustee of  
8834 the bond or beneficiary of the irrevocable letter of credit, and a copy of the bond or irrevocable letter  
8835 of credit shall be filed with him. The bond shall be in a form prescribed or approved by the  
8836 Commissioner and shall be conditioned to secure the faithful accounting for payment to producers,  
8837 agents or representatives, of all grain purchased, stored, handled or sold by the dealer. Any producer  
8838 claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action  
8839 upon the bond against the principal, or the surety, or both in an appropriate court. In the event the  
8840 Commissioner receives written complaint from an injured producer of nonpayment, fraud, deceit or  
8841 negligence of a dealer, the Commissioner may investigate such complaint and make recommendations to  
8842 the surety company as to the culpability of the dealer, if any.

8843 § 3.2-4757. Duties and powers of Commissioner with respect to bonds.

8844 The Commissioner may accept the proceeds from any bond on which he is trustee or any letter of  
8845 credit on which he is beneficiary, and deposit the proceeds in the state treasury at interest in favor of  
8846 the claimants. The Commissioner may institute and prosecute suits or action in the name of the  
8847 Commonwealth on behalf of claimants known and approved by him in any appropriate court for any  
8848 purpose in connection with the collection or distribution of the proceeds. It shall be the duty of any  
8849 person having a claim against a grain dealer to notify the Commissioner of his claim. The  
8850 Commissioner shall have no duty to prosecute any claim unless he has received such notice and believes  
8851 the claim is valid. If the Commissioner believes the claim to be invalid, he shall notify the claimant. The  
8852 claimant shall then have his remedy pursuant to § 3.2-4756. The Commissioner may appeal a decision  
8853 of any court that is contrary to any distribution recommended or authorized by him.



8854 § 3.2-4758. Grain Dealers Licensing and Bonding Fund established; Disposition of fees and  
8855 penalties.

8856 There is hereby created in the state treasury a special nonreverting fund to be known as the Grain  
8857 Dealers Licensing and Bonding Fund, hereafter referred to as "the Fund." The Fund shall be  
8858 established on the books of the Comptroller. All fees and penalties for renewals payable under this  
8859 article shall be collected by the Commissioner and paid into the state treasury and credited to the Fund.  
8860 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
8861 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
8862 general fund but shall remain in the Fund. Moneys in the Fund shall be used for the sole purpose of  
8863 enforcement of this article.

8864 § 3.2-4759. Records to be kept by dealers.

8865 A. Every grain dealer in the Commonwealth shall keep such records of grain transactions for such  
8866 reasonable periods of time and in accordance with good business practices as may be required by the  
8867 Board.

8868 B. Written agreements, in addition to such other information as may be required, shall contain the  
8869 following:

- 8870 1. The seller's name and address;
- 8871 2. The conditions of delivery;
- 8872 3. The amount and kind of grain delivered;
- 8873 4. The price per bushel or basis of value; and
- 8874 5. The date payment is to be made.

8875 § 3.2-4760. Grounds for refusal or revocation of license.

8876 The Commissioner may refuse to grant or renew any license, or revoke any license if he finds that  
8877 the grain dealer:

- 8878 1. Has not satisfied a final money judgment entered against him;
- 8879 2. Has failed to promptly and properly account and pay for in full within 10 calendar days of the  
8880 receipt of the grain from the producer, unless a written agreement signed by both parties expressly  
8881 provides or permits otherwise. The prompt and proper accounting of and payment for grain shall  
8882 include the following:

8883 a. Any grain dealer who purchases grain from a producer shall deliver to the producer or his duly  
8884 authorized representative the full amount of the purchase price, within the time specified in this  
8885 subdivision. Payment shall occur either by transferring a check in the full amount to the producer or his  
8886 authorized agent at the point of transfer of possession, wiring transfer funds to the producer's account  
8887 for the full purchase price, or by depositing a check in the United States mail for the full amount  
8888 properly addressed to the producer and in an envelope postmarked within the time specified in this  
8889 section.

8890 b. Any grain dealer who sells grain deposited in his grain storage facility by a producer shall  
8891 promptly notify the producer or his duly authorized representative of the sale, and shall deliver to the  
8892 producer or his authorized representative the full amount of the purchase price within the time specified  
8893 in this subdivision. The time limit may be extended for good cause and with the written consent of the  
8894 depositor. Nonpayment by the purchaser shall not constitute "good cause" under this section.

8895 c. Any grain dealer who enters into a deferred payment, price later, or contract transaction with a  
8896 producer shall have the transaction in writing and signed by both parties and shall deliver a copy of the  
8897 transaction to the producer or his duly authorized representative. Upon conclusion of the written  
8898 agreement transaction, the dealer shall deliver to the producer or his authorized representative the full  
8899 amount of the purchase price within the time specified in this subdivision;

8900 3. Has failed to maintain business records of his grain transactions as required;

8901 4. Has failed to post current discounts where they can readily be reviewed by the producer or his  
8902 representative;

8903 5. Upon the request of the producer or his representative, has failed to notify the producer or his  
8904 representative at the time of delivery of all discounts and deductions applied;

8905 6. Has failed to file annually with the Commissioner the discount schedules for each grain  
8906 purchased, including the effective date of the purchase, or has failed to make available upon request of  
8907 the Commissioner during normal business hours any changes in the discount schedules that have been  
8908 filed;

8909 7. Has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer;

8910 8. Has failed to state on producers receipts the type of grain transactions that shall include storage,  
8911 grain bank, grain exchange, price later, deferred payment, and contract;

8912 9. Has failed to maintain a bond or letter of credit as required; or

8913 10. Has violated any regulation adopted by the Board.

8914 § 3.2-4761. Procedure for refusal or revocation of license; notice of hearing.

8915 Before the Commissioner refuses or revokes a license, he shall give 10 days' notice by registered  
 8916 mail to the applicant or licensee of the time and place of hearing. The applicant or licensee may appear  
 8917 at the hearing in person, or with counsel and produce witnesses. If the Commissioner finds the applicant  
 8918 or licensee in violation of any act provided in § 3.2-4760, he may refuse, suspend, or revoke the license  
 8919 and shall give immediate notice of his action to the applicant or licensee.

8920 § 3.2-4762. Commissioner's authority to investigate.

8921 The Commissioner may conduct investigations relative to the complaint or matter being investigated,  
 8922 and he shall have free and unimpeded access during normal business hours to all buildings, yards,  
 8923 warehouses, storage and transportation facilities in which grain is kept, stored, handled, or transported,  
 8924 or where records of grain transactions are kept.

8925 § 3.2-4763. Violation a misdemeanor; illegal acts relating to issuance of receipts or removal of grain  
 8926 under storage, exchange or grain bank a felony.

8927 A. Any person who violates any of the provisions of this article or the regulations adopted by the  
 8928 Board is guilty of a Class 1 misdemeanor.

8929 B. Any grain dealer or employee or manager for a grain dealer who: (i) issues any storage, grain  
 8930 exchange or grain banking receipts for any grains that are not in a storage facility at the time of  
 8931 issuing such receipt; (ii) issues any grain receipt, including a scale ticket, that is in any respect  
 8932 fraudulent in its character, either as to its date or to the quantity, quality or inspected grade of such  
 8933 grain; or (iii) removes any grain from a storage facility, except to preserve the grain from fire or other  
 8934 damage or to move from storage to another facility operated by the grain dealer and licensed by the  
 8935 grain dealer, without the permission of the producer or his agent is guilty of a Class 6 felony.

#### 8936 Article 5.

#### 8937 Cotton Handlers.

8938 § 3.2-4764. Definitions.

8939 As used in this article, unless the context requires a different meaning:

8940 "Cotton gin" means a facility where cotton seed and cotton lint are produced from raw cotton.

8941 "Cotton handler" means any person doing business as a cotton gin, cotton merchant, or cotton  
 8942 warehouse.

8943 "Cotton merchant" means any person who buys cotton from a producer for the purpose of resale, or  
 8944 acts as a broker or agent for a producer in arranging the sale of cotton. The term does not include a  
 8945 person that buys cotton for his own use.

8946 "Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for  
 8947 longer than 48 hours.

8948 § 3.2-4765. License required; application; license fee and bond.

8949 A. No person shall do business as a cotton handler without first obtaining a license from the  
 8950 Commissioner.

8951 B. Every person intending to do business as a cotton handler, shall make application to the  
 8952 Commissioner for a license on or before July 1 of each year on a form provided by the Commissioner.  
 8953 Any license granted by the Commissioner shall expire on June 30 following the date of issuance. The  
 8954 application shall specify:

8955 1. An address where the applicant will receive correspondence by first-class mail;

8956 2. Every address where the records of the cotton handler will be kept;

8957 3. Every address, including street address, building number, and city or town:

8958 a. In the case of a cotton gin, where the cotton will be ginned; or

8959 b. In the case of a cotton warehouse, where the cotton will be warehoused;

8960 4. The full name and first-class mail address, including the street, city or town, and state, of a  
 8961 person who is authorized to receive service of process on behalf of the cotton handler; and

8962 5. The form of business organization that the cotton handler will assume. If the applicant will be  
 8963 doing business as a sole proprietorship, he shall disclose the full name of the sole proprietor and the  
 8964 name under which the sole proprietor will be doing business. If the applicant will be doing business as  
 8965 a partnership, he shall disclose the full name of each of the partners, the name of the partnership, and  
 8966 the name under which the partnership will be doing business. If the applicant will be doing business as  
 8967 a corporation, he shall disclose the full name of each of the officers of the corporation, the name of the  
 8968 corporation, and the name under which the corporation will be doing business. If the applicant will be  
 8969 doing business as a limited liability company or foreign limited liability company, he shall disclose the  
 8970 full name of the manager of the company, the name of the company, and the name under which the  
 8971 company will be doing business as a cotton handler. If the company has no manager, the applicant  
 8972 shall disclose the full names of the members of the company.

8973 C. The applicant shall submit with the application a nonrefundable application fee of \$50.

8974 D. Every person submitting an application for a license as a cotton handler who will be doing  
 8975 business as a cotton gin or cotton merchant shall furnish at the time of application for a license a bond  
 8976 in the amount of \$50,000 in accordance with § 3.2-4767. Nothing in this subsection shall require a

- 8977 person doing business as a cotton gin to be separately licensed or bonded as a cotton merchant.
- 8978 E. Except as otherwise provided in subsection F, every person making application for a license as a
- 8979 cotton handler doing business as a cotton warehouse shall furnish, at the time of application for the
- 8980 license, proof of insurance with a company licensed to do business in the Commonwealth in an amount
- 8981 equal to the fair market value of the maximum amount of cotton that can be stored in the warehouse,
- 8982 and a bond in the amount of \$500,000 in accordance with § 3.2-4767.
- 8983 F. In lieu of satisfying the requirements of subsection E, a cotton handler doing business solely as a
- 8984 cotton warehouse may furnish proof of a valid license issued pursuant to the United States Warehouse
- 8985 Act (USWA) (7 U.S.C. § 241 et seq.). A cotton handler governed by this subsection shall notify the
- 8986 Commissioner of any change in the status of its USWA license within 24 hours after being notified by
- 8987 the U.S. Department of Agriculture.
- 8988 § 3.2-4766. Additional information to be reported by cotton gin each license year.
- 8989 Prior to beginning ginning for the current license year, the cotton gin will provide to the
- 8990 Commissioner the last bale tag number used in the previous year and first bale tag number to be used
- 8991 in the current year.
- 8992 § 3.2-4767. Execution and terms of bond; action.
- 8993 Bonds required by § 3.2-4765 shall be executed by the applicant as principal and by a surety
- 8994 company authorized and qualified to do business in the Commonwealth as surety. The applicant shall
- 8995 file on or before July 1 of each licensing year a copy of the bond with the Commissioner, and the
- 8996 Commissioner shall be designated as the trustee of this bond. The bond shall be conditioned upon
- 8997 compliance with the provisions of this article and upon prompt and accurate settlement with the
- 8998 consignor. Any consignor of cotton claiming that a cotton handler has failed to comply with the
- 8999 provisions of this article or any regulations adopted hereunder, or has failed to settle promptly and
- 9000 accurately with the consignor, may bring action upon the cotton handler's bond against either the
- 9001 principal, or the surety, or both, in an appropriate court.
- 9002 § 3.2-4768. Duties and powers of Commissioner with respect to bonds.
- 9003 The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the
- 9004 proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner may
- 9005 institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants
- 9006 known and approved by him in any appropriate court for any purpose in connection with the collection
- 9007 or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a
- 9008 cotton handler to notify the Commissioner of his claim. The Commissioner shall have no duty to
- 9009 prosecute any claim unless he has received notice and believes the claim is valid. If the Commissioner
- 9010 believes the claim is invalid, he shall notify the claimant. The Commissioner may appeal a decision of
- 9011 any court that is contrary to any distribution recommended or authorized by him.
- 9012 § 3.2-4769. Investigation by Commissioner; right of entry and inspection.
- 9013 A. The Commissioner, upon receiving a complaint or upon his own motion, may investigate any
- 9014 violation of the provisions of this article. Such investigation may include:
- 9015 1. The inspection of the books and records of any cotton handler;
- 9016 2. The inspection of any cotton, including the weighing and reweighing of a representative sample of
- 9017 cotton bales stored at the cotton handler's premises; and
- 9018 3. The inspection of any place where cotton or any related record is or has been kept, stored,
- 9019 transported, or otherwise handled. In conducting the inspection, the Commissioner may enter any
- 9020 premises, including any building, yard, warehouse, storage facility, or transportation facility, in which
- 9021 cotton or any related record is or has been kept, stored, transported, or otherwise handled. In
- 9022 exercising such right of entry, the Commissioner shall enter the premises during its hours of operation.
- 9023 B. Any cotton handler who is the subject of an investigation by the Commissioner shall, upon
- 9024 request, assist the Commissioner in making any inspection.
- 9025 § 3.2-4770. Records to be kept by cotton handler.
- 9026 A. Every cotton gin shall keep an accurate daily record of the cotton received from each consignor
- 9027 and ginned. The record shall contain:
- 9028 1. The name and address of the consignor of the cotton;
- 9029 2. The date that the cotton gin received the cotton;
- 9030 3. The condition, quality, and quantity of the cotton on arrival at the cotton gin;
- 9031 4. The gross weight of the vehicle containing the cotton, the tare weight for the vehicle used to
- 9032 transport the cotton, and the net weight of the cotton delivered to the cotton gin for final processing
- 9033 into bales of finished cotton;
- 9034 5. A lot number or other identifying mark given to each consignment of cotton by the cotton gin that
- 9035 shall appear on all tags, tickets, or statements and on any other essential records needed to show what
- 9036 cotton was ginned by the cotton gin on behalf of the consignor;
- 9037 6. The sequentially numbered tag or mark assigned to the cotton bale;

- 9038 7. A report of the finished cotton including the weight, grade, quality and condition;
- 9039 8. A report of credit given for seed obtained during ginning process. If the actual weight of the seed  
9040 is not determined, the record shall indicate the factor used to calculate weight and the final calculation;  
9041 and
- 9042 9. An itemized statement of the charges to be paid to the cotton gin by the consignor in connection  
9043 with ginning the cotton.
- 9044 B. If, at any time, the cotton gin alters any record required by subsection A, the cotton gin shall  
9045 create an addendum to the record indicating the nature of the alteration and the date the alteration was  
9046 made and sign the addendum to the record with the full name of the person making the addendum.
- 9047 C. Every cotton warehouse, receiving any cotton for storage, shall promptly maintain an accurate  
9048 record, showing in detail the following information with reference to the handling and storage of the  
9049 cotton:
- 9050 1. A daily inventory record consisting of all cotton stored in the warehouse recorded by bale tag  
9051 number;
- 9052 2. The receiving record with transactions recorded by bale tag number; and
- 9053 3. The transfer record with transactions recorded by bale tag number.
- 9054 D. Every cotton merchant, having received any cotton for transfer, shall promptly maintain an  
9055 accurate record, showing in detail the following information with reference to the handling and sales of  
9056 the cotton:
- 9057 1. The sales record with transactions recorded by bale tag number; and
- 9058 2. The payable record with transactions recorded by bale tag number.
- 9059 E. Every cotton handler shall retain all records, including tags or tickers, covering each transaction  
9060 with each consignor, for a period of three years after the date that the record is required to be made.
- 9061 § 3.2-4771. Record and accounts to be provided to consignor.
- 9062 A. Every cotton gin shall:
- 9063 1. Within 48 hours after ginning the cotton, make available to the consignor the record required  
9064 under § 3.2-4770; and
- 9065 2. Unless the consignor agrees otherwise in writing, within 10 days after ginning cotton, deliver to  
9066 the consignor a copy of such record and an account of all cotton ginned for the consignor.
- 9067 B. Unless the consignor agrees otherwise in writing, every cotton handler shall, within 10 days after  
9068 transferring or selling cotton on behalf of the consignor, deliver to the consignor a copy of the record  
9069 required under § 3.2-4770 and an account of the consignor's cotton transferred or sold.
- 9070 § 3.2-4772. Certificate establishing condition, quality, grade to be furnished.
- 9071 Every cotton gin shall, at the time of ginning, obtain a sample of each bale of ginned cotton for the  
9072 purpose of determining condition, quality, and grade. Unless such sample is graded by the U.S.  
9073 Department of Agriculture, the burden of proof shall be on the cotton gin to prove the accuracy of its  
9074 accounting as to any transaction that may be questioned by the consignor or the Commissioner, relating  
9075 to condition, quality or grade of ginned cotton.
- 9076 § 3.2-4773. Identification of finished bales of cotton.
- 9077 Every cotton gin shall: (i) determine the weight of each bale of finished cotton immediately following  
9078 the making of the bale; (ii) number sequentially all finished cotton bales; and (iii) affix to each bale a  
9079 sequentially numbered tag for the purpose of identifying the individual bale of finished cotton. The tag  
9080 shall also identify the origin module. The burden of proof shall be upon the cotton gin to prove the  
9081 accuracy of its accounting.
- 9082 § 3.2-4774. Denial, suspension, or revocation of a license.
- 9083 The Commissioner may deny, suspend, or revoke the license of any cotton handler if the cotton  
9084 handler violates any provision of § 3.2-4772 or 3.2-4775. The Commissioner shall provide reasonable  
9085 notice of an informal fact-finding conference pursuant to § 2.2-4019 to any cotton handler in connection  
9086 with the denial, suspension, or revocation of the cotton handler's license.
- 9087 § 3.2-4775. Offenses and punishment.
- 9088 Any cotton handler is guilty of a Class 1 misdemeanor if he:
- 9089 1. Markets, obligates for sale, or otherwise disposes of producer-owned cotton without the written  
9090 consent of the producer;
- 9091 2. Conduct business without the license required by this article;
- 9092 3. Imposes false charges for the handling of cotton;
- 9093 4. Fails to account promptly, accurately, fully, and properly and to make settlement;
- 9094 5. Intentionally makes any false statement with regard to grade, condition, markings, quality, or  
9095 quantity of cotton received, ginned, packed, shipped, or otherwise handled, to the consignor of cotton  
9096 with respect to the consignor's cotton, or to the Commissioner;
- 9097 6. Fails to maintain records as required by this article;
- 9098 7. In any instance in which the cotton handler offers to buy the consignor's cotton, fails to disclose  
9099 to the consignor that the person making the offer is composed substantially of the same persons, as

- 9100 stockholders, members, or otherwise, who compose the cotton handler business;  
 9101 8. Refuses the Commissioner the right of entry authorized by this article;  
 9102 9. Knowingly provides false information on an application for license;  
 9103 10. Fails to give reasonable written notice of any change in the style, name, or personnel of the  
 9104 cotton handler to the Commissioner or to the surety on the bond required by this article; or  
 9105 11. Violates any provision of this article or regulation adopted hereunder.

9106 CHAPTER 48.  
 9107 COMMERCIAL FEED.

9108 § 3.2-4800. Definitions.

9109 As used in this chapter, unless the context requires a different meaning:

9110 "Animal" means any animate being, which is not human, endowed with the power of voluntary  
 9111 action.

9112 "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the  
 9113 commercial feed of a distributor or registrant and distinguishing it from the commercial feed of other  
 9114 distributors or registrants.

9115 "Commercial feed" means any materials or combination of materials that are distributed or intended  
 9116 for distribution for use as feed for animals, or for mixing in feed. Commercial feed shall not include the  
 9117 following commodities, provided they are not adulterated as provided in § 3.2-4808: unmixed whole  
 9118 seeds, raw meat, raw goats' milk, at the farm only; hay, straw, stover, silage, cobs, husks, hulls, and  
 9119 individual chemical compounds or substances, when not mixed or intermixed with other materials.

9120 "Contract feeder" means a person who is an independent contractor and who: (i) feeds commercial  
 9121 feed to animals pursuant to a contract; (ii) is provided such commercial feed by a licensed distributor;  
 9122 and (iii) receives remuneration as determined all or in part by the amount of feed consumption,  
 9123 mortality, profits, or amount or quality of production.

9124 "Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds, or  
 9125 feed ingredients, or a combination of both commercial feeds and feed ingredients, each batch being  
 9126 manufactured according to the specific instructions of the final purchaser.

9127 "Custom mix feed" means a feed for which the customer provides ingredients.

9128 "Distribute" means to: (i) offer or expose for sale, sell, warehouse, exchange, or barter commercial  
 9129 feed; or (ii) supply, furnish, or otherwise provide commercial feed to a contract feeder.

9130 "Distributor" means any person who distributes commercial feed.

9131 "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention  
 9132 of disease in animals and articles other than commercial feed intended to affect the structure or any  
 9133 function of the animal body.

9134 "Feed ingredient" means each of the constituent materials making up a commercial feed.

9135 "Guarantor" means any person whose name appears on the label of a commercial feed.

9136 "Label" means a display of written, printed, or graphic matter upon, or affixed to, the container in  
 9137 which a commercial feed is distributed, or on the invoice or delivery slip with which a bulk commercial  
 9138 feed, or customer-formula feed, is distributed.

9139 "Labeling" means all labels and other written, printed, or graphic matter: (i) upon a commercial  
 9140 feed or any of its containers or wrapper; or (ii) accompanying such commercial feed.

9141 "Licensee" means the person who receives a license to distribute commercial feed under the  
 9142 provisions of this chapter.

9143 "Manufacture" means to grind, mix or blend feed ingredients, or further process a commercial feed  
 9144 for distribution.

9145 "Manufacturer" means any person who manufactures commercial feed.

9146 "Medicated feed" means a commercial feed obtained by mixing a commercial feed and a drug.

9147 "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic  
 9148 nutrients.

9149 "Official analysis" means the analysis of an official sample made by the Commissioner.

9150 "Official sample" means a sample of feed taken by the Commissioner and designated as "official" by  
 9151 the Board.

9152 "Percent" or "percentages" means percentage by weight.

9153 "Pet food" means any commercial feed prepared and distributed for consumption by cats and dogs.

9154 "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific  
 9155 use.

9156 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of  
 9157 measurement of a commodity.

9158 "Small package commercial feed" means commercial feed distributed in individual packages of 10  
 9159 pounds or less.

9160 "Specialty pet" means any domesticated animal usually maintained in a cage or tank, including

9161 *gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.*

9162 *Specialty pet does not include dogs, cats, horses, rabbits, and wild birds.*

9163 *"Specialty pet food" means any commercial feed prepared and distributed for consumption by*  
9164 *specialty pets.*

9165 *"Stop sale, use, removal or seizure order" means an order that prohibits the distributor from selling,*  
9166 *relocating, using, or disposing of a lot of commercial feed or portion thereof, in any manner, until the*  
9167 *Commissioner or an appropriate court, gives written permission to sell, relocate, use, or dispose of the*  
9168 *lot of commercial feed or portion thereof.*

9169 *"Ton" means a unit of 2,000 pounds avoirdupois weight.*

9170 *§ 3.2-4801. Authority of the Board and the Commissioner to adopt regulations.*

9171 *A. The Board may adopt regulations for commercial feeds as are necessary to carry out the*  
9172 *provisions of this chapter.*

9173 *B. The Commissioner may adopt as a regulation:*

9174 *1. The official Definitions of Feed Ingredients, Official Feed Terms, and analytical variations*  
9175 *adopted by the Association of American Feed Control Officials and published in the Official Publication*  
9176 *of that organization;*

9177 *2. Any federal regulation that pertains to this chapter, amending it as necessary for intrastate*  
9178 *applicability;*

9179 *3. The methods of sampling and analysis for commercial feed and the components of commercial*  
9180 *feed adopted by the Association of Official Analytical Chemists in the publication of that organization;*  
9181 *and*

9182 *4. Any method of sampling and analysis for commercial feed and the components of commercial feed*  
9183 *developed by the Department or adopted by agencies of the federal government, agencies of other states,*  
9184 *the Division of Consolidated Laboratory Services or other commercial laboratories accredited by the*  
9185 *Food and Drug Administration, U.S. Department of Agriculture or Association of Official Analytical*  
9186 *Chemists.*

9187 *C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of*  
9188 *Regulations, who shall publish the regulation as a final regulation in the Virginia Register of*  
9189 *Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and*  
9190 *respond to petitions by any interested person at any time with respect to reconsideration or revision of*  
9191 *such regulation.*

9192 *D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise*  
9193 *the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with*  
9194 *the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia*  
9195 *Register of Regulations.*

9196 *E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public*  
9197 *participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or*  
9198 *revision of any regulation adopted pursuant to subsections B, C, and D.*

9199 *§ 3.2-4802. Publications.*

9200 *The Commissioner may publish, in such forms as he may deem proper, information concerning the*  
9201 *sales of commercial feeds, together with such data on their production and use as he may consider*  
9202 *appropriate.*

9203 *§ 3.2-4803. Licensing of manufacturers and guarantors of commercial feed.*

9204 *A. Any person who manufactures a commercial feed or any guarantor shall, before: (i) distributing,*  
9205 *selling, offering or exposing for sale in the Commonwealth any commercial feed; or (ii) supplying*  
9206 *commercial feed to a contract feeder, obtain a license from the Commissioner. The person who*  
9207 *manufactures or is the guarantor of such commercial feed shall submit a license application to the*  
9208 *Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a*  
9209 *license fee of \$50. Any person with multiple manufacturing facilities shall obtain a license and pay a*  
9210 *license fee to the Commissioner for each manufacturing facility that distributes commercial feed in*  
9211 *Virginia. The license year shall be January 1 through December 31. Each license shall expire on*  
9212 *December 31 of the year for which it is issued. Any license shall be valid through January 31 of the*  
9213 *next ensuing year or until the issuance of the renewal license, whichever event occurs first, if the holder*  
9214 *of the license has filed a renewal application with the Commissioner on or before December 31 of the*  
9215 *year for which the current license was issued. Any new applicant who fails to obtain a license within 15*  
9216 *working days of notification of the requirement to obtain a license, or any licensee who fails to comply*  
9217 *with license renewal requirements, shall pay a \$50 late fee to the Commissioner in addition to the*  
9218 *license fee. The Commissioner may issue a stop sale, use, removal, or seizure order on any commercial*  
9219 *feed that the nonlicensee produces or distributes in the Commonwealth until such license is issued.*

9220 *B. The Commissioner shall not issue a license to any person not in compliance with any provision of*  
9221 *this chapter, and shall revoke the license of any person subsequently found not to be in compliance with*  
9222 *any provision of this chapter.*

9223 § 3.2-4804. *Product registration required of commercial feed distributors.*

9224 A. Any person who distributes: (i) medicated feed; (ii) small package commercial feed; or (iii)  
 9225 specialty pet food shall register those commercial feeds with the Commissioner and pay to the  
 9226 Commissioner the registration fees specified in this section. It is unlawful for any person to distribute  
 9227 medicated feed, small package commercial feed, or specialty pet food in the Commonwealth without first  
 9228 obtaining a registration certificate from the Commissioner.

9229 B. The registration year for medicated feed, small package commercial feed, and specialty pet food  
 9230 shall be January 1 through December 31. Each registration shall expire on December 31 of the year for  
 9231 which it is issued. Any registration shall be valid through January 31 of the next ensuing year or until  
 9232 the issuance of the renewal registration, whichever event occurs first, if the holder of the registration  
 9233 has filed a renewal application with the Commissioner on or before December 31 of the year for which  
 9234 the current registration was issued. Any person who fails to comply with registration renewal  
 9235 requirements shall pay a \$50 late fee to the Commissioner in addition to the registration fee. The  
 9236 Commissioner may issue a stop sale, use, removal, or seizure order on any nonregistered commercial  
 9237 feed until such registration is issued.

9238 C. Every manufacturer or guarantor of a medicated feed, except for customer-formula medicated  
 9239 feed, distributed in the Commonwealth shall: (i) apply for registration for each medicated feed on forms  
 9240 furnished or approved by the Commissioner; (ii) pay a registration fee of \$50 per medicated feed to the  
 9241 Commissioner by January 1; and (iii) submit a copy of the proposed label for such medicated feed for  
 9242 approval with the registration form. The manufacturer or guarantor is not required to register  
 9243 additional package sizes of the same medicated feed.

9244 D. Every manufacturer or guarantor of small package commercial feed shall: (i) apply for  
 9245 registration for each small package commercial feed on forms furnished or approved by the  
 9246 Commissioner; (ii) pay a registration fee of \$50 to the Commissioner by January 1 per small package  
 9247 commercial feed, in lieu of an inspection fee for this size package; and (iii) submit a copy of any label,  
 9248 used or proposed to be used with the small package commercial feed for approval with the registration  
 9249 form.

9250 E. Every manufacturer or guarantor of a specialty pet food distributed in the Commonwealth in  
 9251 individual packages of one pound or less shall: (i) apply for registration for each specialty pet food in  
 9252 individual packages of one pound or less only on forms furnished or approved by the Commissioner; (ii)  
 9253 pay a registration fee of \$35 to the Commissioner by January 1 per specialty pet food to a maximum of  
 9254 \$700 for this size package, in lieu of the inspection fee; and (iii) submit a copy of any label, used or  
 9255 proposed to be used with the specialty pet food, for approval with the registration form.

9256 F. If the Commissioner, after examination and investigation, finds that the application and labeling  
 9257 of commercial feed comply with this chapter, the Commissioner shall issue a certificate of registration  
 9258 to the applicant upon payment of the specified registration fee. The granting of registration does not  
 9259 constitute the Commissioner's recommendation or endorsement of the product.

9260 G. If the Commissioner identifies any unregistered commercial feed in commerce in the  
 9261 Commonwealth during the registration year, the Commissioner shall give the guarantor or manufacturer  
 9262 a grace period of 15 working days from issuance of notification of nonregistration to the guarantor or  
 9263 manufacturer within which to register the product. Any guarantor or manufacturer who fails to register  
 9264 the product within the grace period shall pay a \$50 late fee to the Commissioner in addition to the  
 9265 registration fee. The Commissioner may issue a stop sale, use, removal, or seizure order upon any  
 9266 commercial feed until the registration is issued.

9267 § 3.2-4805. *Report and inspection fees.*

9268 A. The reporting year for commercial feed tonnage shall be January 1 through December 31. The  
 9269 manufacturer or guarantor shall, by February 1 of the next ensuing year: (i) file the tonnage statement  
 9270 with the Commissioner; and (ii) pay to the Commissioner the inspection fee that shall not be less than  
 9271 \$35 per year.

9272 B. The filing of a tonnage report and the inspection fee shall be as follows:

9273 1. Except when distributing to a contract feeder, any person who manufactures or distributes  
 9274 commercial feed or a component of commercial feed under his label in the Commonwealth, including a  
 9275 person who mixes, mills, or processes customer-formula feed, shall file with the Commissioner a tonnage  
 9276 statement and pay to the Commissioner an inspection fee of seven cents (\$0.07) per ton of commercial  
 9277 feed per reporting year.

9278 2. Any person who distributes commercial feed to contract feeders in the Commonwealth shall file  
 9279 with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven  
 9280 cents (\$0.07) per ton of commercial feed distributed to contract feeders per reporting year.

9281 3. Any person who distributes commercial feed to a nonlicensed person:

9282 a. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the  
 9283 inspection fee as specified in this subsection; or

9284 *b. Shall not be required to file the tonnage statement or pay the inspection fee if: (i) another person*  
9285 *agrees in a written statement, filed with the Commissioner, to file the tonnage statement and pay the*  
9286 *inspection fee by February 1; and (ii) he files with the Commissioner by February 1 a purchasing*  
9287 *report on a form furnished or approved by the Commissioner stating the number of tons of commercial*  
9288 *feed purchased during the reporting year and from whom the commercial feed was purchased.*

9289 *C. The Commissioner shall not require a person to pay an inspection fee on a portion of a*  
9290 *custom-mix feed that is produced by the purchaser or acquired by the purchaser from a source other*  
9291 *than the person who is paying the inspection fee.*

9292 *D. The manufacturer or guarantor shall report commercial feed tonnage and pay the inspection fee*  
9293 *on all packages of the same product name or brand name of any commercial feed registered under this*  
9294 *section, sold in packages of greater than 10 pounds, as required by this section.*

9295 *E. Any person who is liable for an inspection fee that is due, and has not been paid to the*  
9296 *Commissioner, within 15 working days following February 1, shall pay to the Commissioner a late fee*  
9297 *of 10 percent of the inspection fee due, or \$50, whichever is greater, in addition to the amount of*  
9298 *inspection fee owed. The assessment of this late fee shall not prevent the Commissioner from taking*  
9299 *other action, as provided for in this chapter.*

9300 *F. Any person required to pay an inspection fee, or to report commercial feed tonnage, under this*  
9301 *chapter shall keep such records as may be necessary or required by the Commissioner to indicate*  
9302 *accurately: (i) the tonnage of commercial feed; (ii) the product names of any medicated feeds; (iii) the*  
9303 *product names of any small package commercial feeds; and (iv) the product names of any specialty pet*  
9304 *products distributed by the person in the Commonwealth. The person who reports commercial feed*  
9305 *tonnage shall retain such records for a period of three years. The Commissioner may examine such*  
9306 *records to verify reported statements of tonnage.*

9307 *§ 3.2-4806. Labeling.*

9308 *A. The manufacturer or guarantor of a commercial feed, except customer-formula or custom mix*  
9309 *feed, shall affix a label to the commercial feed that states in the English language the following*  
9310 *information:*

9311 *1. The quantity statement;*

9312 *2. The product name and, if any, the brand name of the commercial feed;*

9313 *3. The guaranteed analysis, the terms of which the Board shall determine by regulation so as to*  
9314 *advise the user of the composition of the feed, or to support claims made in the labeling. In all cases,*  
9315 *the substances or elements shall be determinable by laboratory methods of sampling and analysis, as*  
9316 *specified in § 3.2-4801;*

9317 *4. The common or usual name of each ingredient used in the manufacture of the commercial feed.*  
9318 *The Board may, by regulation: (i) permit the use of a collective term for a group of ingredients that*  
9319 *perform a similar function; or (ii) exempt such commercial feeds, or any group of ingredients, from this*  
9320 *requirement if the Board finds that such statement is not required in the interest of consumers;*

9321 *5. The name and principal mailing address of the manufacturer, or the person responsible for*  
9322 *distributing the commercial feed, if such person is not the manufacturer;*

9323 *6. Directions for use in the case of all commercial feeds containing drugs, and for such other feeds*  
9324 *as the Board may, by regulation, require as necessary for the safe and effective use of the commercial*  
9325 *feed; and*

9326 *7. Any precautionary statements as the Board, by regulation, determines are necessary for the safe*  
9327 *and effective use of the commercial feed.*

9328 *B. The manufacturer or guarantor of a customer-formula or custom mix feed shall affix to or include*  
9329 *with the feed a label, invoice, delivery slip, or other shipping document that states in the English*  
9330 *language the following information:*

9331 *1. The name and address of the manufacturer;*

9332 *2. The name and address of the purchaser;*

9333 *3. The date of manufacture;*

9334 *4. Either: (i) the product name and net weight of each commercial feed and each other ingredient*  
9335 *used in the mixture; (ii) the guaranteed analysis, as provided in subdivision A 3 with the ingredients as*  
9336 *provided in subdivision A 4; (iii) identification by means of an identifying name, number or similar*  
9337 *designation, where the manufacturer or guarantor furnishes all ingredients for a customer-formula feed,*  
9338 *provided that the manufacturer or guarantor makes available a copy of the list of ingredients to the*  
9339 *Commissioner at the location where the Commissioner takes an official sample; or (iv) the manufacturer*  
9340 *or guarantor notes a modification on the label of a commercial feed where the manufacturer or*  
9341 *guarantor modifies a commercial feed in normal trade at the request of the consumer, and such request*  
9342 *does not affect the guaranteed analysis of said feed;*

9343 *5. Directions for use for all customer formula or custom mix feeds containing drugs and for such*  
9344 *other feeds as the Board may require, by regulation, as necessary for the safe and effective use of the*  
9345 *commercial feed;*



- 9346 6. The directions for use and precautionary statements as required by subdivisions A 6 and A 7; and  
 9347 7. If drugs are used in formulating the commercial feed: (i) the purpose of the medication (claim  
 9348 statement); and (ii) the established name of each active drug ingredient, and the level of each drug used  
 9349 in the final mixture, expressed in accordance with applicable regulations.
- 9350 § 3.2-4807. Misbranding.
- 9351 A. It is unlawful for any person who is a manufacturer or guarantor of commercial feed to distribute  
 9352 a commercial feed if:
- 9353 1. The labeling of the commercial feed is false or misleading in any particular;  
 9354 2. The commercial feed is distributed under the name of another commercial feed;  
 9355 3. The commercial feed is labeled in any manner other than as required in § 3.2-4806;  
 9356 4. The commercial feed purports to be, or is represented as, a commercial feed, or if it purports to  
 9357 contain, or is represented as containing, a commercial feed ingredient, unless such commercial feed or  
 9358 feed ingredient conforms to the definition, if any, prescribed by regulation by the Board; or  
 9359 5. Any word, statement, or other information required by, or under authority of, this chapter to  
 9360 appear on the label or labeling of the commercial feed is not prominently placed thereon with such  
 9361 conspicuousness, (as compared with other words, statements, designs, or devices in the labeling) and in  
 9362 such terms, so that the purchaser or user is likely to read and understand the label under customary  
 9363 condition of purchase and use.
- 9364 B. The violation of any provision of this section shall be deemed to be misbranding.
- 9365 § 3.2-4808. Adulteration.
- 9366 A. It is unlawful for any person who is a manufacturer or guarantor of a commercial feed to  
 9367 distribute a commercial feed if the commercial feed:
- 9368 1. Contains any poisonous or deleterious substance that may render the commercial feed or its  
 9369 packaging injurious to health, unless the poisonous or deleterious substance is not an added substance  
 9370 and is not of sufficient quantity to render the commercial feed injurious to health under ordinary  
 9371 circumstances;
- 9372 2. Contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe  
 9373 within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act. If the substance is a  
 9374 food additive or a pesticide chemical in or on a raw agricultural commodity, then subdivisions A 3 and  
 9375 A 4 shall govern;
- 9376 3. Is, bears, or contains any food additive that is unsafe within the meaning of Section 409 of the  
 9377 Federal Food, Drug, and Cosmetic Act;
- 9378 4. Is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe  
 9379 within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act. If a pesticide  
 9380 chemical has been used in or on a raw agricultural commodity in conformity within an exemption  
 9381 granted, or a tolerance prescribed, under Section 408 of the Federal Food, Drug, and Cosmetic Act and  
 9382 such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing,  
 9383 dehydrating, or milling, then the residue of such pesticide chemical remaining in or on such processed  
 9384 feed shall not be deemed unsafe, so long as: (i) such residue in or on the raw agricultural commodity  
 9385 has been removed to the extent possible within good manufacturing practice; (ii) the concentration of  
 9386 such residue in the processed feed is not greater than the tolerance prescribed by Section 408 of the  
 9387 Federal Food, Drug, and Cosmetic Act for the raw agricultural commodity; and (iii) the feeding of such  
 9388 processed feed will not result, or be likely to result, in a pesticide residue in the edible produce of the  
 9389 animal, and that pesticide residue is unsafe within the meaning of Section 408 (a) of the Federal Food,  
 9390 Drug, and Cosmetic Act;
- 9391 5. Is, bears or contains any color additive that is unsafe within the meaning of Section 721 of the  
 9392 Federal Food, Drug, and Cosmetic Act;
- 9393 6. Is, bears, or contains any new animal drug that is unsafe within the meaning of Section 512 of the  
 9394 Federal Food, Drug, and Cosmetic Act;
- 9395 7. Has had any valuable constituent, in whole or in part, omitted or abstracted from the commercial  
 9396 feed, or any less valuable substance substituted into the commercial feed;
- 9397 8. Has had the composition or quality of the commercial feed fall below or differ from that which  
 9398 the manufacturer or guarantor purports or represents the commercial feed to possess by its labeling;
- 9399 9. Contains a drug, and the methods used in, or the facilities or controls used for, its manufacture,  
 9400 processing, or packaging do not conform to current good manufacturing practice; or if the drug does  
 9401 not conform to regulations adopted by the Board, to assure that the drug meets the requirements of this  
 9402 chapter as to safety, and to assure that the drug has the identity, strength, quality, and purity  
 9403 characteristics that it purports or is represented to possess. In adopting such regulations, the Board  
 9404 shall adopt the current good manufacturing practice regulations for Type A Medicated Articles, and  
 9405 Type B, and Type C Medicated Feeds, established under authority of the Federal Food, Drug, and  
 9406 Cosmetic Act, unless the Board determines that such regulations are not appropriate to the conditions

9407 *that exist in the Commonwealth; or*

9408 *10. Contains viable weed seeds in amounts exceeding the limits as specified in the regulations of the*  
 9409 *Board. Nothing in this subdivision shall apply to whole unprocessed seeds.*

9410 *B. The violation of any provision of this section shall be deemed to be adulteration.*

9411 *§ 3.2-4809. Inspection, sampling, and analysis.*

9412 *A. The Commissioner may enter and inspect any factory, warehouse, or establishment within the*  
 9413 *Commonwealth during operating hours in which commercial feed is manufactured, processed, packed,*  
 9414 *warehoused, sold, or held for distribution, or any vehicle used to transport or hold such feed, to*  
 9415 *determine whether the provisions of this chapter have been complied with, including whether or not any*  
 9416 *operations may be subject to such provisions. The inspection shall include the verification of only such*  
 9417 *records and production and control procedures, pertinent equipment, finished material, unfinished*  
 9418 *material, any container, and labeling therein as may be necessary to determine compliance with this*  
 9419 *chapter.*

9420 *B. The Commissioner may obtain samples from any premises during operating hours or any vehicle*  
 9421 *enumerated in subsection A, and examine records relating to distribution of commercial feeds.*

9422 *C. When the inspection and analysis of an official sample indicates a commercial feed has been*  
 9423 *adulterated, misbranded, or is otherwise deficient under the provisions of this chapter, the Commissioner*  
 9424 *shall, upon request, furnish to the licensee a portion of the sample concerned within 30 days following*  
 9425 *the receipt of such analysis by the licensee.*

9426 *D. The Commissioner, in determining for administrative purposes whether a commercial feed is*  
 9427 *deficient in any component, shall be guided by the official sample. Such official sample shall be*  
 9428 *obtained and analyzed as provided in § 3.2-4801.*

9429 *E. The Commissioner shall allocate adequate personnel to the major farm feed consuming areas of*  
 9430 *the state to carry out his duties under this act as such duties relate to insuring the quality, analysis, and*  
 9431 *quantity of feed sold and distributed in the Commonwealth.*

9432 *§ 3.2-4810. Assessments for variance from guaranteed analysis, misbranding, and adulteration.*

9433 *A. If the Commissioner determines that a commercial feed fails to meet the label guarantee within*  
 9434 *the analytical variations specified in § 3.2-4801, the Commissioner shall make an assessment against the*  
 9435 *guarantor on each pound of the lot of commercial feed represented by the sample and that any person*  
 9436 *sold as follows:*

9437 *1. For deficient protein, two and one-half times the value of the deficiency;*

9438 *2. For deficient fat, two times the value of the deficiency; and*

9439 *3. For excessive fiber, 10 percent of the sales invoice price of the feed.*

9440 *B. If the Commissioner determines that any commercial feed is misbranded as provided in § 3.2-4807*  
 9441 *or adulterated as provided in § 3.2-4808, the Commissioner shall assess 10 percent of the sales invoice*  
 9442 *price of the feed against the guarantor on each pound of the lot of commercial feed represented by the*  
 9443 *sample and that any person sold.*

9444 *C. If the Commissioner finds a commercial feed in violation of § 3.2-4807, 3.2-4808, or subsection A,*  
 9445 *the Commissioner shall:*

9446 *1. Assess the manufacturer or guarantor based on the violations that occur in a 90-day period, such*  
 9447 *period to begin on the date when the Commissioner sends notification of the violation to the*  
 9448 *manufacturer or guarantor. The 90-day period restarts upon each notification of violation to the*  
 9449 *manufacturer;*

9450 *2. Assess the manufacturer or guarantor on violative commercial feeds that bear the same label and*  
 9451 *are from the same manufacturing location;*

9452 *3. Not make more than one assessment against the manufacturer or guarantor for the same*  
 9453 *manufacturing lot of commercial feed when the lot identification information is listed on the label of the*  
 9454 *commercial feed;*

9455 *4. Not assess the manufacturer or guarantor in excess of \$5,000 per occurrence;*

9456 *5. Assess a minimum of \$200 for the first violation;*

9457 *6. Assess a minimum of \$400 for the second violation;*

9458 *7. Assess a minimum of \$800 for the third violation;*

9459 *8. Assess a minimum of \$1,600 for the fourth violation;*

9460 *9. Assess a minimum of \$3,200 for the fifth violation;*

9461 *10. Assess a minimum of \$5,000 for the sixth violation, and for each ensuing violation, without*  
 9462 *limitation;*

9463 *11. Waive the initial \$200 minimum assessment if the Commissioner finds that the violation of the*  
 9464 *commercial feed variance provision has not occurred within the 90-day period; and*

9465 *12. Have the discretion not to make an assessment if the value of the deficiency of the initial*  
 9466 *violation is \$5 or less, but shall notify the manufacturer or guarantor and shall apply all further*  
 9467 *assessments on additional violations.*

9468 *D. The manufacturer or guarantor shall pay all assessments to the Commissioner within 60 days of*

9469 notice of payment due. Any person who fails to pay the assessment within the specified time shall pay to  
 9470 the Commissioner a late fee as specified in subsection A of § 3.2-4811. The Commissioner shall revoke  
 9471 the license of such person who fails to pay the assessment.

9472 E. The Commissioner shall compute the approximate value per pound of protein and fat and this  
 9473 computation shall be used to establish the relative value of deficiencies on commercial feed sold or  
 9474 offered for sale in the Commonwealth. The Commissioner may furnish, and upon application shall  
 9475 furnish, such relative values to any person engaged in the manufacture or sale of feed in the  
 9476 Commonwealth.

9477 F. As used in this section, the term "value of the deficiency" means the monetary value of the  
 9478 deficiency in protein or fat of the lot of commercial feed from which the Commissioner collected a  
 9479 sample. The Commissioner shall determine the value of the deficiency by calculating the number of  
 9480 pounds of commercial feed deficient in protein or fat, as compared to the label guarantee, in the sample  
 9481 lot and multiplying those pounds by the relative value per pound of protein or fat.

9482 § 3.2-4811. Fee for late payment of assessments.

9483 Any manufacturer or guarantor who does not pay an assessment for variance from label guarantee  
 9484 within 60 days shall pay to the Commissioner a late payment fee of 10 percent of the assessment or  
 9485 \$50, whichever is greater, in addition to the assessment for variance from label guarantee.

9486 § 3.2-4812. Prohibited acts.

9487 A. It is unlawful for a manufacturer or guarantor of commercial feed to:

9488 1. Manufacture or distribute any commercial feed that is adulterated or misbranded;

9489 2. Adulterate or misbrand any commercial feed;

9490 3. Remove or dispose of a commercial feed in violation of an order issued pursuant to § 3.2-4813;

9491 4. Fail to obtain a license in accordance with § 3.2-4803;

9492 5. Fail to register medicated feed, small package commercial feed, or specialty pet food in  
 9493 accordance with § 3.2-4804;

9494 6. Obstruct or hinder the Commissioner in the performance of his duties under this chapter or  
 9495 otherwise attempt to prevent the Commissioner from performing these duties; or

9496 7. Use metal of any kind, including any hook, snap, staple, or other fastener or device, to secure a  
 9497 package or attach any card, label, or ticket to a package containing feed.

9498 B. It shall be unlawful for any person to distribute agricultural commodities within the  
 9499 Commonwealth including whole seeds, hay, straw, stover, silage, cobs, husks, and hulls that, if such  
 9500 commodities were commercial feed, are adulterated within the meaning of § 3.2-4808.

9501 § 3.2-4813. Detained commercial feeds.

9502 A. The Commissioner may issue and enforce a written or printed stop sale, use, removal, or seizure  
 9503 order to the owner or custodian of any lot of commercial feed distributed in violation of this chapter.  
 9504 The Commissioner shall release for distribution the commercial feed held under a stop sale, use,  
 9505 removal, or seizure order when the requirements of this chapter have been satisfied. If the  
 9506 Commissioner determines that the commercial feed cannot be brought into compliance with this chapter,  
 9507 the Commissioner shall release the commercial feed to be: (i) remanufactured, if possible; (ii) returned  
 9508 to the manufacturer; or (iii) destroyed.

9509 B. The Commissioner may seize any lot of commercial feed not in compliance with this chapter. The  
 9510 Commissioner may make application for seizure to an appropriate court in the city or county where the  
 9511 commercial feed is located. In the event that the court finds the said commercial feed to be in violation  
 9512 of this chapter, and orders the condemnation of said commercial feed, the owner of the commercial feed  
 9513 shall dispose of the seized commercial feed in any manner that, in the opinion of the Commissioner, is  
 9514 consistent with the quality of the commercial feed, and that complies with the laws of the  
 9515 Commonwealth. In no instance shall the court order the disposition of said commercial feed without first  
 9516 giving the claimant an opportunity to apply to the court for release of said commercial feed, or for  
 9517 permission to process or relabel said commercial feed, to bring it into compliance with this chapter.

9518 § 3.2-4814. Disposition of fees, assessments, and penalties.

9519 All licensing, registration and inspection fees, assessments and penalties under this chapter received  
 9520 by the Commissioner shall be paid into the Feed, Lime, Fertilizer, and Animal Remedies Fund,  
 9521 established in § 3.2-3616. The fund shall be used in carrying out the purpose and provisions of this  
 9522 chapter, to include inspection, sampling and other expenses; except that seven cents (\$0.07) per ton of  
 9523 commercial feed per license year of inspection fees received by the Commissioner shall be transferred to  
 9524 the Virginia Agricultural Foundation Fund pursuant to § 3.2-2905.

9525 § 3.2-4815. Commissioner's actions; injunction.

9526 A. Nothing in this chapter shall require the Commissioner to: (i) report for prosecution; (ii) institute  
 9527 seizure proceedings; or (iii) issue a withdrawal from distribution order if a violation of this chapter is  
 9528 minor, or if the Commissioner believes the public interest will best be served by a suitable notice of  
 9529 warning in writing.

9530 B. The Commissioner may apply for, and an appropriate court may grant, a temporary or  
 9531 permanent injunction, restraining any person from violating, or continuing to violate, any of the  
 9532 provisions of this chapter, or regulation adopted under the chapter.

9533 § 3.2-4816. The Commissioner to cancel license and product registrations.

9534 The Commissioner shall cancel the commercial feed license and product registrations of any person  
 9535 who fails to comply with the chapter by:

9536 1. Failing to file the tonnage report;

9537 2. Falsifying information;

9538 3. Making an inaccurate statement of tonnage distributed in Virginia during any reporting license  
 9539 year;

9540 4. Making an inaccurate listing of medicated feed, small packaged commercial feed, or specialty pet  
 9541 feed for registration;

9542 5. Failing to pay the license, registration, or inspection fee;

9543 6. Failing to accurately report any of the information required to be submitted under this chapter;

9544 7. Failing to keep records for a period of three years; or

9545 8. Failing to allow inspection of records by the Commissioner, as required by subsection F of

9546 § 3.2-4806.

9547 § 3.2-4817. Violation of chapter; penalty.

9548 Any person convicted of violating any provision of this chapter is guilty of a Class 3 misdemeanor.

9549 CHAPTER 49.

9550 ANIMAL REMEDIES.

9551 § 3.2-4900. Definitions.

9552 As used in this chapter, unless the context requires a different meaning:

9553 "Advertisement" means all representations, other than those on the label, disseminated in any manner  
 9554 or by any means, relating to animal remedies.

9555 "Animal" means any animate being, which is not human, endowed with the power of voluntary  
 9556 action.

9557 "Animal remedies" means all drugs, combinations of drugs, proprietary medicines, and combinations  
 9558 of drugs and other ingredients, other than for food purposes or cosmetic purposes that are prepared or  
 9559 compounded for animal use; except those exempted by the Commissioner.

9560 "Dosage form" means any animal remedy prepared in tablets, pills, capsules, ampules, or other units  
 9561 suitable for administration as an animal remedy.

9562 "Drug" means articles: (i) recognized in the latest addition or any supplement thereto of the Official  
 9563 United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the  
 9564 Official National Formulary; (ii) intended for use in the diagnosis, cure, mitigation, treatment, or  
 9565 prevention of disease in animals; (iii) other than food or cosmetics, intended to affect the structure or  
 9566 any function of the body of animals; or (iv) intended for use as a component of any articles specified in  
 9567 clauses (i) or (ii) of this definition.

9568 "Label" means a display of written, printed, or graphic matter upon the immediate container of any  
 9569 article.

9570 "Labeling" means all labels and other written, printed, or graphic matter upon any article or any of  
 9571 its containers or wrappers or accompanying such article.

9572 "Medicated feed" means a product obtained by mixing a commercial feed and a drug.

9573 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of  
 9574 measurement of a commodity.

9575 "Sell" or "sale" includes exchange.

9576 "Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling,  
 9577 relocating, using, or disposing of an animal remedy in any manner, until the Commissioner or an  
 9578 appropriate gives written permission to sell, relocate, use or dispose of the animal remedy.

9579 § 3.2-4901. Exemptions from chapter.

9580 The provisions of this chapter shall not apply to the compounding or dispensing of veterinarians'  
 9581 prescriptions, nor the dispensing of drugs or preparations by registered pharmacists compounded at the  
 9582 request of the purchaser and not intended for resale, nor shall such provisions apply to any animal  
 9583 remedy sold exclusively to or used exclusively by licensed veterinarians.

9584 § 3.2-4902. Registration required.

9585 A. The manufacturer or person responsible for distributing an animal remedy in the Commonwealth  
 9586 shall obtain a registration from the Commissioner for the animal remedy before placing such remedy on  
 9587 the market, except for medicated feeds registered under subsection C of § 3.2-4804 of the Virginia  
 9588 Commercial Feed Law.

9589 B. Any person may make application for registration of any animal remedy by filing with the  
 9590 Commissioner, on forms furnished or approved by him, a statement with respect to such animal remedy  
 9591 that includes:

9592 1. The name and principal address of the manufacturer or person responsible for placing such  
 9593 animal remedy on the market and the name and address of the person to whom correspondence should  
 9594 be directed; and

9595 2. The name, brand, or trademark under which the animal remedy will be sold.

9596 C. A label for any animal remedy shall accompany each application for registration, and, when  
 9597 requested by the Commissioner, a representative and true sample or specimen of each animal remedy to  
 9598 be registered shall accompany such application.

9599 D. A statement of claims made or to be made that differ from the label submitted shall be filed with  
 9600 the Commissioner prior to use.

9601 E. If the Commissioner after examination and investigation, finds that the application and labeling  
 9602 comply with the provisions of this chapter, a certificate of registration shall be issued to the applicant  
 9603 on payment of a registration fee as provided in § 3.2-4904.

9604 F. This section does not apply to an animal remedy intended solely for investigational, experimental,  
 9605 or laboratory use by qualified persons, provided such remedy is plainly labeled "for investigational use  
 9606 only."

9607 G. The Commissioner may determine whether a preparation intended for animal use and subject to  
 9608 registration shall be registered as a commercial feed and as an animal remedy.

9609 H. The manufacturer or person responsible for placing on the market an animal remedy that is  
 9610 offered for sale, sold or otherwise distributed in the Commonwealth before it has been properly  
 9611 registered shall be subject to a late registration fee of \$50 payable to the Commissioner in addition to  
 9612 the registration fee. The registrant shall pay the late registration fee before the registration is issued.

9613 § 3.2-4903. Refusal or revocation of registration.

9614 The Commissioner may refuse to issue any certificate of registration to any applicant, if available  
 9615 facts indicate that the product proposed for registration is of negligible or no value in correcting,  
 9616 alleviating, or mitigating animal injuries or diseases for which it is intended. The Commissioner may  
 9617 suspend or revoke any registration for violation of any provision of this chapter.

9618 § 3.2-4904. Registration fees; terms of registration; renewal of registration.

9619 A. The Commissioner shall, before issuing a certificate of registration for any animal remedy, collect  
 9620 from the applicant for such certificate a registration fee of \$25 for each separate animal remedy  
 9621 registered. When an animal remedy has been registered and the registration fee paid by the  
 9622 manufacturer or distributor, no other person shall be required to pay such fee.

9623 B. The registrant shall pay a registration fee for the registration year of January 1 through  
 9624 December 31. Each registration shall expire on December 31 of the year for which it is issued. A  
 9625 registration is valid through January 31 of the next ensuing year or until the issuance of the renewal  
 9626 registration, whichever event occurs first, so long as the holder of the registration has filed a renewal  
 9627 application with the Commissioner on or before December 31 of the year for which the current  
 9628 registration was issued and has paid the registration fee to the Commissioner. The granting of  
 9629 registration does not constitute the Commissioner's recommendation or endorsement of the animal  
 9630 remedy.

9631 C. If the Commissioner identifies any unregistered animal remedy in commerce in the Commonwealth  
 9632 during the registration year, the Commissioner shall give the person who is required to register the  
 9633 animal remedy, a grace period of 15 working days from issuance of notification to register the animal  
 9634 remedy. Any person required to register an animal remedy who fails to register the animal remedy  
 9635 within the grace period shall pay to the Commissioner a \$50 late fee in addition to the registration fee.  
 9636 The Commissioner may issue a stop sale, use, removal, or seizure order upon any animal remedy until  
 9637 the registration is issued.

9638 § 3.2-4905. Disposition of funds collected.

9639 All fees and assessments received by the Commissioner under this chapter shall be paid into the  
 9640 Feed, Lime, Fertilizer and Animal Remedies Fund, established in § 3.2-3617, to be used in carrying out  
 9641 the provisions of this chapter.

9642 § 3.2-4906. Adulterated remedy.

9643 An animal remedy is adulterated if:

9644 1. It was prepared or held under unsanitary conditions and as a result it: (i) may have become  
 9645 contaminated with filth; or (ii) may have been rendered injurious to animal health.

9646 2. Its composition, purity, strength, or quality falls below or differs from what it is purported or is  
 9647 represented to possess by its labeling. The Commissioner shall allow a reasonable tolerance from such  
 9648 representation, in accordance with good manufacturing practices.

9649 3. It consists in whole or in part of any filthy, putrid or decomposed substance.

9650 4. It bears or contains any poisonous or deleterious substance that may render it injurious to health  
 9651 under such conditions of use as are customary or usual.

9652 5. Its container is composed of any injurious or deleterious substance that may render it injurious to

9653 health.

9654 § 3.2-4907. *Misbranded remedy.*

9655 *An animal remedy is misbranded:*

9656 1. *Unless the label bears, in the English language:*

9657 a. *The name and principal addresses of the manufacturer or person responsible for placing such*

9658 *animal remedy on the market.*

9659 b. *The name, brand, or trademark under which the animal remedy is sold.*

9660 c. *An accurate quantity statement of the net contents of the package, lot, or parcel, such contents*

9661 *stated by weight in the case of solids, by volume in the case of liquids, and by both count and weight or*

9662 *volume per dose in the case of dosage forms.*

9663 d. *The common or usual name of each active ingredient; in the case of a drug or drugs intended to*

9664 *be mixed with or in a feed for animals, and in the case of mixtures of a drug or drugs with or in a feed*

9665 *for animals, the English name of each active ingredient shall be stated and also the percentage of each*

9666 *active ingredient, or, in the case of antibiotics, the number of grams of each such active ingredient*

9667 *present in one pound of the product.*

9668 e. *Adequate directions for use.*

9669 f. *Adequate warnings against use in those conditions, whether pathological or normal, where its use*

9670 *may be dangerous to the health of animals, or against unsafe dosage, methods or duration of methods,*

9671 *administration, or application, in such manner and form, as are necessary for the protection of animals.*

9672 2. *If the labeling is false or misleading in any particular.*

9673 3. *If its container is made, formed, or filled so as to be deceptive or misleading as to the amount of*

9674 *contents.*

9675 4. *If it is dangerous to the health of animals when used in the dosage or with the frequency or*

9676 *duration prescribed, recommended, or suggested in the labeling of such remedy.*

9677 5. *If any word, statement, or other information appearing on the label does not also appear on the*

9678 *outside container or wrapper, if present, of the retail package of such article, or is not easily legible*

9679 *through the outside container or wrapper.*

9680 6. *If any word, statement, or other information required to appear on the label is not prominently*

9681 *placed on the label with such conspicuousness, as compared with other words, statements, designs, or*

9682 *devices in the labeling, and in such terms, that it is likely to be read and understood by the ordinary*

9683 *individual under customary conditions of purchase and use.*

9684 *Any animal remedy that is manufactured and distributed under license from and under the*

9685 *supervision of the U.S. Department of Agriculture, and in compliance with the regulations of such*

9686 *department complies with this section.*

9687 § 3.2-4908. *Withholding noncomplying remedies from sale; tagging, condemnation, destruction, and*

9688 *correction of adulterated or misbranded remedies.*

9689 A. *The Commissioner shall require those animal remedies that are found or believed not to comply*

9690 *with the provisions of this chapter to be withheld from sale until he determines that the remedies are in*

9691 *compliance with such provisions.*

9692 B. *Whenever the Commissioner finds or has reasonable cause to believe an animal remedy is*

9693 *adulterated or misbranded he shall affix to such article a tag or other appropriate marking, giving*

9694 *notice that such article is, or is suspected of being, adulterated or misbranded and has been detained*

9695 *and warning all persons not to dispose of such article in any manner until permission is given by the*

9696 *Commissioner or an appropriate court. Any such article may be removed from display by the*

9697 *manufacturer or vendor, but shall remain on the premises.*

9698 C. *If such a detained article is found, after examination and analysis, to be adulterated or*

9699 *misbranded, the Commissioner may petition the judge of any appropriate court in whose jurisdiction the*

9700 *article is detained for condemnation. If the Commissioner finds that such detained article is not*

9701 *adulterated or misbranded, he shall remove the tag or other marking.*

9702 D. *If the court finds that a detained animal remedy is adulterated or misbranded, such article shall,*

9703 *after entry of the decree, be destroyed, under the supervision of the Commissioner, at the expense of the*

9704 *defendant. All court costs and fees, and storage and other proper expenses, shall be paid by the*

9705 *defendant or his agent.*

9706 E. *If the adulteration or misbranding can be corrected by proper processing or labeling of the*

9707 *article, an appropriate court, after entry of the decree and after such costs, fees, and expenses have*

9708 *been paid and a sufficient bond, conditioned that such article shall be so processed or labeled, has been*

9709 *executed, may order such article to be delivered to the defendant for such processing or labeling under*

9710 *the supervision of the Commissioner. The expense of such supervision shall be paid by the defendant.*

9711 *The bond shall be returned to the defendant on the representation to the court by the Commissioner that*

9712 *the article no longer violates any of the provisions of this chapter and that expenses incident to such*

9713 *proceeding were paid.*

9714 § 3.2-4909. *Investigations by Commissioner; right of access; securing and examining samples;*

9715 *obstructing Commissioner; penalty.*

9716 *The Commissioner shall make all necessary investigations pertinent to the enforcement of this*  
9717 *chapter.*

9718 *The Commissioner shall have free access during operating hours to any establishment in which*  
9719 *animal remedies are manufactured, processed, packed, sold or offered for sale, to inspect such premises*  
9720 *and to determine whether the provisions of this chapter are being violated.*

9721 *The Commissioner may secure samples or specimens of any animal remedy after paying or offering*  
9722 *to pay for them, and he shall have an examination or analysis made of such sample to determine*  
9723 *whether the provisions of this chapter are being violated. Any person who hinders or obstructs in any*  
9724 *way the Commissioner in the performance of his official duties is guilty of a Class 3 misdemeanor.*

9725 *§ 3.2-4910. Use of information acquired by Commissioner or employees of Department.*

9726 *The Commissioner or any employee of the Department shall not use or reveal information acquired*  
9727 *under §§ 3.2-4902 and 3.2-4909 except in the enforcement of this chapter, or to the courts, when*  
9728 *relevant in any judicial proceeding.*

9729 *§ 3.2-4911. Publication of information by Commissioner.*

9730 *The Commissioner may publish at such times and in such forms as he may deem proper, information*  
9731 *concerning the sales of animal remedies, together with data on their production and use, and a report*  
9732 *of the results of the analyses of official samples of animal remedies sold within the Commonwealth as*  
9733 *compared with the analyses guaranteed in the registration and on the label. The information concerning*  
9734 *production and use of animal remedies shall not disclose the operations of any person.*

9735 *§ 3.2-4912. Prohibitions.*

9736 *A. It is unlawful for any person to:*

9737 *1. Sell, deliver, hold, or offer for sale any animal remedy that has not been registered with the*  
9738 *Commissioner as provided in § 3.2-4902, except that any biological product for use on or testing of any*  
9739 *livestock, poultry, or any animal, manufactured under a license issued by the U.S. Department of*  
9740 *Agriculture, shall not be considered as being subject to the registration requirements of such section.*

9741 *2. Manufacture, sell, deliver, hold, or offer for sale any animal remedy that is adulterated or*  
9742 *misbranded.*

9743 *3. Compound, manufacture, make, produce, pack, package, or prepare within the Commonwealth any*  
9744 *animal remedy to be offered for sale or distribution unless such compounding, manufacture, making,*  
9745 *producing, packaging, packing, or preparing is done with adequate equipment under the supervision of*  
9746 *a licensed veterinarian, a graduate chemist, a licensed pharmacist, a licensed physician, or some other*  
9747 *person as may be approved by the Commissioner after an investigation and a determination by the*  
9748 *Commissioner that they are qualified by scientific or technical training or by experience to perform such*  
9749 *duties of supervision as may be necessary to protect animal health and public safety.*

9750 *4. Disseminate any advertisement that is false or misleading. No person or medium for the*  
9751 *dissemination of any advertisement, except the manufacturer, packer, distributor, or seller of the article*  
9752 *to which a false advertisement relates, is subject to the penalties for violations of this chapter for*  
9753 *disseminating such false advertisement, unless he refused, on the request of the Commissioner, to furnish*  
9754 *the name and address of the manufacturer, packer, distributor, seller, or advertising agency that caused*  
9755 *him to disseminate such advertisement.*

9756 *5. Dispose of a detained article in violation of § 3.2-4908.*

9757 *6. Give a guaranty that is false, except a person who relied on the guaranty signed by, and*  
9758 *containing the name and address of, the person from whom he received the animal remedy in good*  
9759 *faith.*

9760 *7. Alter, mutilate, destroy, obliterate, or remove any part of the labeling of any animal remedy if*  
9761 *such acts result in the animal remedy being misbranded, or do any other act, while the animal remedy*  
9762 *is being held for sale that results in the misbranding of such article.*

9763 *8. Forge, counterfeit, simulate, or falsely represent, or without proper authority use, any mark,*  
9764 *stamp, tag, label, or other identification device required by § 3.2-4907.*

9765 *9. Sell or offer to sell any biological product for use on any livestock, poultry, or other animal,*  
9766 *unless such product is manufactured under a license issued by the U.S. Department of Agriculture or a*  
9767 *registration issued by the Commissioner, or unless such product meets the requirements of the federal*  
9768 *Food, Drug and Cosmetic Act.*

9769 *10. Sell or offer to sell any biological product that has not been kept in refrigeration under*  
9770 *conditions prescribed by the regulations of the Board.*

9771 *B. The Commissioner shall assess any person who commits a prohibited act under this chapter 10*  
9772 *percent of the retail price of the animal remedy at the time of sampling on the product found in*  
9773 *violation, or \$50, whichever is greater, not to exceed \$5,000 per occurrence. The person assessed shall*  
9774 *pay the assessment to the Commissioner within 60 days from the date of notice to the person whose*  
9775 *name appears on the label. Any person who fails to pay the assessment within the specified time shall*

9776 pay a late fee of \$50 to the Commissioner in addition to the assessment. The Commissioner shall revoke  
 9777 the registration of any person who fails to pay the assessment.

9778 § 3.2-4913. Report of violations; duty of attorney for the Commonwealth.

9779 The Commissioner shall report violations of this chapter to the attorney for the Commonwealth. It  
 9780 shall be the duty of every attorney for the Commonwealth, to whom the Commissioner shall report any  
 9781 violation of this chapter, to commence proceedings and prosecute without delay. This section shall not  
 9782 require the Commissioner to report, for the institution of prosecution under such sections, minor  
 9783 violations of this chapter if he believes the public interest will be adequately served in the circumstances  
 9784 by a suitable written notice of warning. In all prosecutions under this chapter involving the composition  
 9785 of an animal remedy, a certified copy of the official analysis signed by the analyst shall be accepted as  
 9786 prima facie evidence of the composition, provided the defendant has been furnished a copy thereof in  
 9787 advance of the trial.

9788 § 3.2-4914. Violation of chapter or regulations a misdemeanor.

9789 Any person convicted of violating any provisions of this chapter and the regulations issued hereunder  
 9790 is guilty of a Class 1 misdemeanor, except as otherwise provided.

9791 CHAPTER 50.

9792 FARM MACHINERY AND EQUIPMENT.

9793 § 3.2-5000. Sale of farm machinery or equipment where serial number has been removed, defaced or  
 9794 obliterated; penalty.

9795 A. It is unlawful for any person to sell or offer for sale in the Commonwealth any new agricultural  
 9796 implement, farm tractor, or other type of farm machinery or equipment, knowing that the manufacturer's  
 9797 original serial number has been removed, defaced, or in any way obliterated. Any person who violates  
 9798 this subsection is guilty of a Class 2 misdemeanor. A person convicted of a second or subsequent  
 9799 offense under this subsection is guilty of a Class 1 misdemeanor.

9800 B. The dealer in farm equipment who possesses for sale any farm implement or machinery that has  
 9801 had its serial number removed, defaced, or in any way obliterated, shall have his supplier stamp, attach  
 9802 or scribe, as was originally done, the same serial number as was placed upon the machine or implement  
 9803 at the time of its manufacture. Nothing contained in this section shall be construed to prevent any  
 9804 manufacturer or importer, or his agents, other than dealers, from doing his own numbering on  
 9805 agricultural implements, farm tractors, or other types of farm machinery or equipment, or parts,  
 9806 removed or changed, and replacing the numbered parts.

9807 SUBTITLE IV.

9808 FOOD AND DRINK; WEIGHTS AND MEASURES.

9809 CHAPTER 51.

9810 FOOD AND DRINK.

9811 Article 1.

9812 General Provisions.

9813 § 3.2-5100. Duties of Commissioner.

9814 A. It shall be the duty of the Commissioner to inquire into the dairy and food and drink products,  
 9815 and the articles that are food or drinks, or the necessary constituents of the food or drinks, that are  
 9816 manufactured, sold, exposed, or offered for sale in the Commonwealth.

9817 B. The Commissioner may procure samples of the dairy and food products covered by this chapter  
 9818 and may have the samples analyzed.

9819 C. The Commissioner shall make a complaint against the manufacturer or vendor of any food or  
 9820 drink or dairy products that are adulterated, impure, or unwholesome, in contravention of the laws of  
 9821 the Commonwealth, and furnish all evidence to obtain a conviction of the offense charged. The  
 9822 Commissioner may make complaint and cause proceedings to be commenced against any person for  
 9823 enforcement of the laws relative to adulteration, impure, or unwholesome food or drink, and in such  
 9824 cases he shall not be obliged to furnish security for costs.

9825 § 3.2-5101. Board authorized to adopt regulations; exception.

9826 A. Whenever in the judgment of the Commissioner action will promote honesty and fair dealing in  
 9827 the interest of consumers, the Board shall adopt regulations fixing and establishing for any food or  
 9828 class of food: labeling requirements; a reasonable definition and standard of identity; and a reasonable  
 9829 standard of quality and fill of container, or tolerances or limits of variability. In prescribing a definition  
 9830 and standard of identity for any food or class of food in which optional ingredients are permitted, the  
 9831 Board shall, for the purpose of promoting honesty and fair dealing in the interest of the consumers,  
 9832 designate the optional ingredients that shall be named on the label. The definitions and standards so  
 9833 adopted may conform so far as practicable to the definitions and standards promulgated by the  
 9834 Secretary of Health and Human Services under authority conferred by Section 401 of the federal act.

9835 B. Any regulations adopted pertaining to this section shall not apply to nonprofit organizations  
 9836 holding one-day food sales. The Commissioner may disseminate to nonprofit organizations educational  
 9837 materials related to the safe preparation of food for human consumption.



9838 § 3.2-5102. Commissioner to have access to factories, warehouses, and other places; examination of  
9839 samples.

9840 The Commissioner shall have free access at all reasonable hours to any factory, warehouse, or  
9841 establishment in which foods are manufactured, processed, packed, or held for introduction into  
9842 commerce, or to enter any vehicle being used to transport or hold such foods in commerce, or any  
9843 store, restaurant, or other place in which food is being offered for sale for the purpose of:

9844 1. Inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions  
9845 of this chapter are being violated; and

9846 2. Securing samples or specimens of any food after paying or offering to pay for such sample. It  
9847 shall be the duty of the Commissioner to make or cause to be made examinations of samples secured  
9848 under the provisions of this section to determine whether or not any provision of this chapter is being  
9849 violated.

9850 This section shall not apply to nonprofit organizations holding one-day food sales.

9851 § 3.2-5103. Standards of variability permissible to any article of food.

9852 The Commissioner with the approval of the Board shall establish and publish standards or limits of  
9853 variability permissible in any article of food, and these standards shall be the standards before all  
9854 courts. When standards have been or may be established by the U.S. Department of Health and Human  
9855 Services, they shall be accepted by the Department and published as standards for the Commonwealth,  
9856 but such standards shall not go into effect until a reasonable time after publication. The Commissioner,  
9857 with the approval of the Board, shall have authority to adopt uniform regulations for carrying out the  
9858 provisions of this section.

9859 § 3.2-5104. Chemical work incident to execution of laws.

9860 The chemical work incident to the execution of the provisions of this chapter shall be provided by  
9861 the Division of Consolidated Laboratory Services.

9862 Article 2.  
9863 Sanitary Requirements.

9864 § 3.2-5105. Definition of term "food."

9865 The term "food" as used in this article means all articles used for food, drink, confectionery or  
9866 condiment, whether simple, mixed or compound, and all substances or ingredients used in the  
9867 preparation thereof, intended for human consumption and introduction into commerce.

9868 § 3.2-5106. Sanitary conditions of food establishments.

9869 A. Every place used for the preparation for sale, manufacture, packing, storage, sale, or distribution  
9870 of any food shall be properly lighted, drained, plumbed, and ventilated, and shall be operated with strict  
9871 regard for the purity and wholesomeness of the food produced, and with strict regard to the influence of  
9872 such conditions upon the health of any worker or employee.

9873 B. The floors, sidewalls, ceilings, furniture, receptacles, implements, and machinery of every place  
9874 where food is manufactured, packed, stored, sold, or distributed, shall at all times be kept in a clean,  
9875 healthful, and sanitary condition.

9876 C. All refuse, dirt, and waste products subject to decomposition and fermentation incident to the  
9877 manufacture, preparation, packing, storing, selling, and distributing of food, shall be removed from the  
9878 premises daily.

9879 § 3.2-5107. Plastering and painting sidewalls and ceilings; interior woodwork; floors.

9880 A. Any place where food is manufactured, produced, prepared, processed, packed, or exposed shall:  
9881 (i) keep its sidewalls and ceilings well plastered, wainscoted, or ceiled, preferably with metal or lumber,  
9882 and shall be kept oil-painted or well limewashed; and (ii) keep all interior woodwork clean and washed  
9883 with soap and water.

9884 B. Every building, room, basement, or cellar occupied or used for the preparation, manufacture,  
9885 packing, storage, sale, or distribution of food, shall have an impermeable floor made of cement or tile,  
9886 laid in cement, brick, wood, or other suitable nonabsorbent material that can be flushed and washed  
9887 clean with water.

9888 § 3.2-5108. Sleeping arrangements.

9889 The sleeping places for persons employed in any food establishment shall be separate and apart from  
9890 the room in which food products are manufactured or stored, and no person shall sleep in any place  
9891 where flour, meal, or any manufactured products thereof are manufactured or stored.

9892 § 3.2-5109. Washrooms and toilets.

9893 Any place where food is manufactured, prepared, exposed, or offered for sale shall have a  
9894 convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and  
9895 apart from any room used for the manufacture or storage of food products.

9896 § 3.2-5110. Daily cleaning of instruments and machinery.

9897 All trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables,  
9898 shelves, and all knives, saws, cleavers, and other utensils and machinery used in moving, handling,

- 9899 cutting, chopping, mixing, canning, and any other process, shall be thoroughly cleaned daily.
- 9900 § 3.2-5111. Food protected from flies, dust, and dirt.
- 9901 Food in the process of manufacture, preparation, packing, storing, sale, or distribution, shall be
- 9902 protected from flies, dust, dirt, and all other foreign or injurious contamination.
- 9903 § 3.2-5112. Clothing of employees.
- 9904 The clothing of any worker or employee shall be clean.
- 9905 § 3.2-5113. Employees with contagious or infectious disease.
- 9906 No employer shall knowingly permit or require any person to work in any place where food is
- 9907 manufactured, produced, prepared, processed, packed, or exposed, who is afflicted with any contagious
- 9908 or infectious disease, or with any skin disease.
- 9909 § 3.2-5114. Smoking.
- 9910 Smoking is prohibited in workrooms of food-producing establishments.
- 9911 § 3.2-5115. Animals.
- 9912 No animal shall be permitted in any area used for the manufacture or storage of food products. A
- 9913 guard or guide animal may be allowed in some areas if the presence of the animal is unlikely to result
- 9914 in contamination of food, food contact surfaces, or food packaging materials.
- 9915 § 3.2-5116. Metal beverage containers with detachable metal pull tabs.
- 9916 It is unlawful for any person to sell or offer for sale at retail within the Commonwealth any metal
- 9917 beverage container or any composite beverage container designed and constructed with an all metal
- 9918 pull tab opening device that detaches from the container when the container is opened in a manner
- 9919 normally used to empty the contents of the container. For the purpose of this section, the term
- 9920 "beverage" shall mean beer as defined in § 4.1-100, or other malt beverages and mineral waters, soda
- 9921 water and formulated soft drinks, with or without carbonation.
- 9922 § 3.2-5117. Penalty for violation; misdemeanor.
- 9923 Any person violating any of the provisions of §§ 3.2-5106 through 3.2-5116 is guilty of a Class 3
- 9924 misdemeanor.
- 9925 § 3.2-5118. Sterilization of bottles and containers.
- 9926 A. All bottles, jugs, cans, barrels, and containers used in the packing, bottling, storage, distribution,
- 9927 and sale of nonalcoholic beverage and drink products shall be sterilized by one of the following
- 9928 methods before using:
- 9929 1. By sterilization with boiling water or live steam; or
- 9930 2. By soaking in a hot caustic solution that shall contain not less than three percent alkali, of which
- 9931 not less than 60 percent is caustic, or its equivalent in cleansing or germicidal effectiveness as such
- 9932 solutions are commonly used in the soaker-type washing and sterilizing equipment.
- 9933 If other equally efficient methods of sterilization are developed, the Commissioner may approve those
- 9934 methods of sterilization.
- 9935 B. Any violation of this section is a Class 1 misdemeanor.
- 9936 § 3.2-5119. Transportation or storage under unsanitary conditions; penalty.
- 9937 A. It shall be unlawful for any person or any common carrier to permit unsanitary conditions to
- 9938 exist in the transportation or storage of an article of food intended for introduction into commerce, if
- 9939 the unsanitary conditions may contaminate the article of food.
- 9940 B. Any person who violates any of the provisions of this section is guilty of a Class 2 misdemeanor.
- 9941 C. The Commissioner is empowered to enter and inspect all stores, warehouses, and any and all
- 9942 means or places of transportation or storage of articles of food. Any person who hinders or obstructs
- 9943 the Commissioner in the discharge of the authority or duty imposed upon him by the provisions of this
- 9944 section, is guilty of a Class 2 misdemeanor.
- 9945 D. Whenever any article of food is transported or stored under unsanitary conditions, the
- 9946 proceedings for the enforcement of this section may be instituted and maintained in any county or city
- 9947 through which or in which such article of food has been or is so transported or stored under unsanitary
- 9948 conditions.
- 9949 Article 3.
- 9950 Adulteration, Misbranding, and False Advertising.
- 9951 § 3.2-5120. Definitions.
- 9952 As used in this article, unless the context requires a different meaning:
- 9953 "Advertisement" means all representations disseminated in any manner or by any means, other than
- 9954 by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase
- 9955 of food.
- 9956 "Butter" means the food product generally known as butter, which is made exclusively from milk or
- 9957 cream, or both, with or without common salt, and with or without coloring matter, and containing not
- 9958 less than 80 percent by weight of milk fat, having allowed for all tolerances.
- 9959 "Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as
- 9960 may be necessary by all reasonable means, from all foreign or injurious contaminations.

- 9961 *"Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.).*
- 9962 *"Food" means all articles used for food, drink, confectionery, or condiment, for humans or other*
- 9963 *animals, whether simple, mixed, or compound, and all substances or ingredients used in the preparation*
- 9964 *thereof.*
- 9965 *"Immediate container" does not mean package liners.*
- 9966 *"Label" means a display of written, printed, or graphic matter upon the immediate container of any*
- 9967 *article.*
- 9968 *"Labeling" means all labels and other written, printed, or graphic matter upon an article or any of*
- 9969 *its containers or wrappers, or accompanying such article.*
- 9970 *"Selling of food" means the manufacture, production, processing, packing, exposure, offer,*
- 9971 *possession, and holding of any such article for sale; the sale of any such article; and the supplying of*
- 9972 *any such articles in the conduct of any food establishment.*
- 9973 *§ 3.2-5121. Authority to adopt regulations; conformity with federal regulations; hearings;*
- 9974 *enforcement of article; review of regulations.*
- 9975 *A. The Board is authorized to adopt regulations for the efficient enforcement of this article, unless*
- 9976 *that authority is specifically granted to the Commissioner. The Board may make the regulations adopted*
- 9977 *under this article conform, insofar as practicable with those adopted under the federal act.*
- 9978 *Notwithstanding any other requirement under the Administrative Process Act (§ 2.2-4000 et seq.) to the*
- 9979 *contrary, the Commissioner may adopt any regulation under the federal act without public hearing.*
- 9980 *Such regulation shall be effective upon filing with the Registrar of Regulations. The Board, at its next*
- 9981 *regular meeting, shall adopt the regulation after notice but without public hearing unless a petition is*
- 9982 *filed in accordance with subsection F.*
- 9983 *B. The Board may adopt any edition of the Food and Drug Administration's Food Code, or*
- 9984 *supplement thereto, or any portion thereof, as regulations, with any amendments as it deems*
- 9985 *appropriate. In addition, the Board may repeal or amend any regulation adopted pursuant to this*
- 9986 *subsection. No regulations adopted or amended by the Board pursuant to this subsection shall establish*
- 9987 *requirements for any license, permit or inspection unless such license, permit or inspection is otherwise*
- 9988 *provided for in this title. The provisions of the Food and Drug Administration's Food Code shall not*
- 9989 *apply to farmers selling their own farm-produced products directly to consumers for their personal use,*
- 9990 *whether such sales occur on such farmer's farm or at a farmers' market, unless such provisions are*
- 9991 *adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).*
- 9992 *C. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the*
- 9993 *adoption of any regulation pursuant to subsection B if the Board of Health adopts the same edition of*
- 9994 *the Food and Drug Administration's Food Code, or the same portions thereof, pursuant to subsection C*
- 9995 *of § 35.1-14 and the regulations adopted by the Board and the Board of Health have the same effective*
- 9996 *date. In the event that the Board of Health adopts regulations pursuant to § 2.2-4012.1, the effective*
- 9997 *date of the Board's regulations may be any date on or after the effective date of the regulations adopted*
- 9998 *by the Board of Health.*
- 9999 *Notwithstanding any exemption to the contrary, a regulation adopted pursuant to subsection B shall*
- 10000 *be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, and 2.2-4007.05, and shall be*
- 10001 *published in the Virginia Register of Regulations. After the close of the 60-day comment period, the*
- 10002 *Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15*
- 10003 *days after publication in the Virginia Register, unless the Board has withdrawn or suspended the*
- 10004 *regulation, or a later date has been set by the Board. The Board shall also hold at least one public*
- 10005 *hearing on the proposed regulation during the 60-day comment period. The notice for such public*
- 10006 *hearing shall include the date, time and place of the hearing.*
- 10007 *D. Hearings authorized or required by this article shall be conducted by the Board, the*
- 10008 *Commissioner or such officer, agent, or employee as the Board may designate for the purpose.*
- 10009 *E. The Commissioner shall coordinate enforcement of this article with the applicable federal*
- 10010 *agencies charged with enforcement of the federal act, in order to avoid unnecessary or unjustified*
- 10011 *conflict between enforcement of this article and the federal act as to Virginia food manufacturers,*
- 10012 *processors, packers, and retailers.*
- 10013 *F. The Board or Commissioner shall from time to time for good cause shown to review the*
- 10014 *regulations and enforcement guidelines adopted pursuant to this article. If the Commissioner finds that*
- 10015 *any federal regulation or enforcement guideline that includes any tolerance or action level that does not*
- 10016 *protect the health and welfare of the citizens of the Commonwealth, he shall petition the appropriate*
- 10017 *federal agency to change the federal regulation or enforcement guideline.*
- 10018 *G. The Commissioner or any interested party for good cause shown may request the Board to hold a*
- 10019 *public hearing concerning any regulation or enforcement guideline. If the Board after hearing finds that*
- 10020 *the regulation or enforcement guideline does not protect the health and welfare of the citizens of the*
- 10021 *Commonwealth, it shall adopt a new regulation or enforcement guideline. Within the limits of personnel*

10022 and funds available all state agencies and institutions shall cooperate and assist in furnishing  
 10023 information and data as to whether the regulations or enforcement guidelines in question protect the  
 10024 health and welfare of the citizens of the Commonwealth.

10025 § 3.2-5122. Adulterated food.

10026 A food shall be deemed to be adulterated if:

10027 1. It bears or contains any poisonous or deleterious substance that may render it injurious to health;  
 10028 but if the substance is not an added substance the food shall not be considered adulterated under this  
 10029 subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;

10030 2. It bears or contains any added poisonous or added deleterious substance that is unsafe within the  
 10031 meaning of § 3.2-5125;

10032 3. It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed  
 10033 substance, or if it is otherwise unfit for food;

10034 4. It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have  
 10035 become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or  
 10036 injurious to health;

10037 5. It is the product of a diseased animal, an animal that has died otherwise than by slaughter, or an  
 10038 animal that has been fed upon the uncooked offal from a slaughterhouse;

10039 6. Its container is composed, in whole or in part, of any poisonous or deleterious substance that may  
 10040 render the contents injurious to health;

10041 7. Any valuable constituent has been, in whole or in part, omitted or abstracted;

10042 8. Any substance has been substituted in whole or in part for a valuable constituent;

10043 9. Damage or inferiority has been concealed in any manner;

10044 10. Any substance has been added or mixed or packed with the food so as to increase its bulk or  
 10045 weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

10046 11. It is confectionery and it bears or contains any alcohol or nonnutritive article or substance,  
 10047 except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one  
 10048 percent, harmless natural gum, and pectin. In addition, any confectionery that: (i) contains five percent  
 10049 or less by volume of alcohol or; (ii) any chewing gum that contains harmless nonnutritive masticatory  
 10050 substances, shall not be deemed adulterated; or

10051 12. It bears or contains a coal-tar color other than one from a batch that has been certified by the  
 10052 U.S. Department of Health and Human Services.

10053 § 3.2-5123. Misbranded food.

10054 A. A food shall be deemed to be misbranded:

10055 1. If its labeling is false or misleading in any particular.

10056 2. If any word, statement, or other information appearing on the label does not also appear on the  
 10057 outside container or wrapper, if present, of the retail package of such article, or is not easily legible  
 10058 through the outside container or wrapper.

10059 3. If any word, statement, or other information required by this article is not prominently placed on  
 10060 the label with such conspicuousness (as compared with other words, statements, designs, or devices, in  
 10061 the labeling) and in such terms as to render it likely to be read and understood by the ordinary  
 10062 individual under customary conditions of purchase and use.

10063 4. Unless its label bears:

10064 a. The common or usual name of the food, if there is any;

10065 b. When the food is fabricated from two or more ingredients, the common or usual name of each  
 10066 ingredient. Spices, flavorings, and colors not required to be certified under section 721 (c) of the federal  
 10067 act, other than those sold as such, may be designated as spices, flavorings, and colorings, without  
 10068 naming each; and

10069 c. When the food purports to be a beverage containing vegetable or fruit juice, a statement with  
 10070 appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice  
 10071 contained in the food.

10072 To the extent that the Commissioner believes that compliance with the requirements of subdivision 4  
 10073 b is impractical or results in deception or unfair competition, exemptions shall be established by the  
 10074 Commissioner. The requirements of subdivision 4 b shall not apply to any carbonated beverages,  
 10075 ingredients of which have been fully and correctly disclosed to the extent prescribed by subdivision 4 b  
 10076 to the Commissioner in an affidavit.

10077 5. If it is offered for sale under the name of another food.

10078 6. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence,  
 10079 the word, imitation, and immediately thereafter, the name of the food imitated.

10080 7. If its container is made, formed, or filled as to be misleading.

10081 8. If in package form, unless it bears a label containing: (i) the name and place of business of the  
 10082 manufacturer, packer, or distributor; (ii) the name of the article; (iii) an accurate statement of the  
 10083 quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause

10084 (iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages  
10085 shall be established, by regulations prescribed by the Board.

10086 9. If it purports to be or is represented as a food for which a definition and standard of identity has  
10087 been prescribed by regulations as provided by § 3.2-5101 unless: (i) it conforms to such definition and  
10088 standard; and (ii) its label bears the name of the food specified in the definition and standard, and,  
10089 insofar as may be required by such regulations, the common names of optional ingredients, other than  
10090 spices, flavoring, and coloring, present in such food.

10091 10. If it purports to be or is represented as:

10092 a. A food for which a standard of quality has been prescribed by regulations as provided by  
10093 § 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as  
10094 regulations specify, a statement that it falls below such standards; or

10095 b. A food for which a standard or standards of fill of container have been prescribed by regulations  
10096 as provided by § 3.2-5101, and it falls below the standard of fill of container applicable thereto, unless  
10097 its label bears, in such manner and form as such regulations specify, a statement that it falls below such  
10098 standard.

10099 11. If it purports to be or is represented for special dietary uses, unless its label bears such  
10100 information concerning its vitamin, mineral, and other dietary properties as the Board requires through  
10101 regulation to fully inform purchasers as to its value for such uses.

10102 12. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless  
10103 it bears labeling stating that fact; provided that to the extent that the Commissioner believes that  
10104 compliance with the requirements of this subdivision is impracticable, exemptions shall be established by  
10105 the Commissioner; provided, that the provisions of this subdivision and of subdivisions 4 and 9 with  
10106 respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

10107 13. If it is a food intended for human consumption, it is offered for sale, and its label and labeling  
10108 do not comply with the requirements of Section 403 (q) of the federal act pertaining to nutrition  
10109 information.

10110 14. If it is a food intended for human consumption, it is offered for sale, and its label and labeling  
10111 do not comply with the requirements of Section 403 (r) of the federal act pertaining to nutrient content  
10112 claims and health claims.

10113 B. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is  
10114 alleged to be false because it is misleading, then in determining whether the labeling or advertisement is  
10115 misleading, there shall be taken into account, among other things, not only representations made or  
10116 suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent  
10117 to which the labeling or advertisement fails to reveal facts material in the light of such representations  
10118 or material with respect to consequences that may result from the use of the article to which the  
10119 labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement  
10120 or under such conditions of use as are customary or usual.

10121 § 3.2-5124. Labeling as kosher and halal; penalty.

10122 It is unlawful to label any repackaged food or food product or display or offer for sale any  
10123 unwrapped food or food product that represents the food or food product as kosher or halal without  
10124 indicating the person or entity authorizing such designation by providing the name or symbol of the  
10125 authority or providing a phone number or website to access the information.

10126 Any person who knowingly violates any provision of this section is guilty of a Class 3 misdemeanor.

10127 § 3.2-5125. Poisonous or deleterious substance added to food.

10128 Any poisonous or deleterious substance added to any food, except if it is required in the production  
10129 of the food or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for  
10130 purposes of subdivision 2 of § 3.2-5122; but when any poisonous or deleterious substance is required or  
10131 cannot be avoided, the Board shall adopt regulations limiting the quantity to such extent as it finds  
10132 necessary for the protection of public health. Any quantity exceeding the limits established by the Board  
10133 shall also be deemed to be unsafe for purposes of the application of subdivision 2 of § 3.2-5122. While  
10134 such regulation is in effect limiting the quantity of any poisonous or deleterious substance in any food,  
10135 such food shall not, by reason of bearing or containing any added amount of such substance, be  
10136 considered to be adulterated within the meaning of subdivision 1 of § 3.2-5122 if the added amount is  
10137 not in excess of the limits established by the Board. In determining the quantity of any added substance  
10138 to be tolerated in or on different articles of food, the Board shall take into account the extent to which  
10139 the use of such substance is required or cannot be avoided in the production of each article, and the  
10140 other ways in which the consumer may be affected by the same or other poisonous or deleterious  
10141 substances.

10142 § 3.2-5126. Prohibited acts; exceptions; Commissioner may seek injunction; penalties.

10143 A. The following acts and causing the following acts within the Commonwealth are unlawful:

10144 1. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or

10145 *misbranded.*

10146 2. *The adulteration or misbranding of any food.*

10147 3. *The receipt in commerce of any food that is adulterated or misbranded, and the delivery or*  
10148 *proffered delivery thereof for pay or otherwise.*

10149 4. *The dissemination of any false advertisement.*

10150 5. *The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by*  
10151 *§ 3.2-5102.*

10152 6. *The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is*  
10153 *false.*

10154 7. *The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the*  
10155 *labeling of, or the performing of any other act with respect to a food, if such act is done while an*  
10156 *article is held for sale and results in the article being misbranded.*

10157 8. *Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any*  
10158 *mark, stamp, tag, label, or other means of identification authorized or required by regulations adopted*  
10159 *under the provisions of this article.*

10160 9. *The use of sulfiting agents as preservatives on raw fruits and vegetables being offered for sale to*  
10161 *the public for human consumption.*

10162 B. *Any person who violates any of the provisions of subsection A is guilty of a Class 1 misdemeanor.*

10163 C. *A wholesale or retail merchant who purchases food or drink in a closed container from a*  
10164 *reputable manufacturer shall not be in violation of subsection A unless such person knowingly violated*  
10165 *the provisions of subsection A. It shall not be a violation of subdivision A 1, A 3 or A 6, if a person can*  
10166 *establish that he relied upon a guaranty or undertaking signed by the individual from or through whom*  
10167 *he received any food in good faith, to the effect that such food is not adulterated or misbranded. The*  
10168 *guaranty or undertaking shall contain the name and address of the person who provided the guaranty*  
10169 *or undertaking, or a place of business, or an agent or representative on whom process may be served,*  
10170 *in the Commonwealth.*

10171 D. *No publisher, broadcaster, or agency or medium for the dissemination of an advertisement, except*  
10172 *the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall*  
10173 *be liable under this section by reason of the dissemination by him of such false advertisement, unless he*  
10174 *has refused, on the request of the Commissioner to furnish the name and post-office address of the*  
10175 *manufacturer, packer, distributor, seller, or advertising agency, residing in the Commonwealth who*  
10176 *caused him to disseminate such advertisement.*

10177 E. *The Commissioner may apply to an appropriate court for, and such court shall have jurisdiction*  
10178 *upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any*  
10179 *person from violating any provision of subsection A, regardless of whether or not an adequate remedy*  
10180 *at law exists. But whenever it appears to the satisfaction of the court in the case of a newspaper,*  
10181 *periodical, or other publication that: (i) restraining the dissemination of a false advertisement in any*  
10182 *particular issue of such publication would delay the delivery of such issue; and (ii) such delay would be*  
10183 *due to the method by which the manufacture and distribution of such publication is customarily*  
10184 *conducted by the publisher in accordance with sound business practice, and not to any method or*  
10185 *device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or*  
10186 *restraining order with respect to such false advertisement or any other advertisement, the court shall*  
10187 *exclude such issue from the operation of the restraining order or injunction.*

10188 § 3.2-5127. *Removal of certain labels from meat packaging prohibited; penalty.*

10189 *It is unlawful for any person holding or offering for retail sale any meat, poultry, or seafood in*  
10190 *packaged form who affixes to such food a label containing a date by which such food is to be sold, to*  
10191 *willfully remove, alter, mutilate, destroy, or obscure the dated portion of the label on the package,*  
10192 *unless the dated portion of the label is removed in connection with the repackaging of such food, or to*  
10193 *correct bona fide typographical errors. If the dated portion of the label is removed and a replacement*  
10194 *label is attached when such food is repackaged, the replacement label shall bear the original date by*  
10195 *which the food is to be sold or an earlier date. Any person who violates any provision of this section is*  
10196 *guilty of a Class 3 misdemeanor.*

10197 *This section shall not apply to meat, poultry, or seafood that is canned or cured.*

10198 § 3.2-5128. *Duty of attorney for the Commonwealth when violation reported; Commissioner to give*  
10199 *notice.*

10200 A. *If the Commissioner institutes criminal proceedings against any person for any violation pursuant*  
10201 *to this article, then: (i) he shall give appropriate notice to the person and give an opportunity for the*  
10202 *person to present his views before the Commissioner, either orally or in writing, in person or by*  
10203 *attorney, with regard to such contemplated proceeding, and (ii) he may report the violation to an*  
10204 *attorney for the Commonwealth.*

10205 B. *It shall be the duty of each attorney for the Commonwealth, to whom the Commissioner reports*  
10206 *any violation of this article, to cause appropriate proceedings to be instituted in the appropriate courts*

10207 without delay and to be prosecuted in the manner required by law.

10208 C. Nothing in this article shall require the Commissioner to report minor violations of this article to  
10209 the attorney for the Commonwealth, whenever he believes that the public interest will be adequately  
10210 served in the circumstances by a suitable written notice or warning.

10211 Article 4.

10212 Seizures, Prosecutions, Penalties, and Enforcement.

10213 § 3.2-5129. Definition of term "food."

10214 The term "food" as used in this article means all articles used for food, drink, confectionery or  
10215 condiment, whether simple, mixed or compound, and all substances or ingredients used in the  
10216 preparation thereof, intended for human consumption and introduction into commerce.

10217 § 3.2-5130. Inspections required to operate food establishment.

10218 A. It is unlawful to operate a food manufacturing plant, food storage warehouse, or retail food store  
10219 until it has been inspected by the Commissioner. This section shall not apply to food manufacturing  
10220 plants operating under a grant of inspection from the Office of Meat and Poultry Services or a permit  
10221 from the Office of Dairy and Foods in the Department; and Grade A fluid milk manufacturing plants  
10222 and shellfish and crustacea processing plants operating under a permit from the Virginia Department of  
10223 Health. This section shall also not apply to: (i) any nonprofit organizations holding one-day food sales;  
10224 or (ii) any retail establishments that, (a) do not prepare or serve food, (b) sell only food or beverages  
10225 that are sealed in packaging by the manufacturer and have been officially inspected in the  
10226 manufacturing process, (c) do not sell infant formulas, (d) do not sell salvaged foods, and (e) certify to  
10227 the Department that they meet the provisions of this section. Retail establishments that meet the  
10228 provisions of clause (ii) shall be exempt from inspection and the inspection fees. Nothing in this section  
10229 shall prevent the Department from inspecting any retail establishment if a consumer complaint is  
10230 received.

10231 B. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

10232 § 3.2-5131. Right to enter and take samples.

10233 The Commissioner is empowered, in the performance of his duties, to enter into any place where he  
10234 has reason to believe food or drink is made, stored, sold, or offered for sale, and open any cask, tub,  
10235 jar, bottle, or package containing or supposed to contain, any article of food or drink, and examine or  
10236 cause to be examined the contents, and take samples for analysis. The person making such inspection  
10237 shall take samples of the article or produce in the presence of at least one witness, and shall, in the  
10238 presence of the witness, mark or seal the sample. The inspector shall tender at the time of taking to the  
10239 manufacturer or vendor of the product, or to the person having the custody of the product, the value  
10240 thereof, and the statement in writing for the taking of the sample.

10241 § 3.2-5132. Notice and warning to place premises in sanitary condition.

10242 Whenever it is determined by the Commissioner that filthy or unsanitary conditions exist or are  
10243 permitted to exist in the operation of any place where any food or drink products are manufactured,  
10244 stored, deposited, or sold for any purpose, the proprietor or owner of the place, or any person owning  
10245 or operating any place where any food or drink products are manufactured, stored, deposited, or sold,  
10246 shall first be notified and warned by the Commissioner to establish in a sanitary condition within a  
10247 reasonable length of time such place. After the first notice and warning of a violation has been issued  
10248 no notice and warning of the same violation occurring within 90 days after the first notice and warning  
10249 has been given as provided under § 3.2-5133 shall be required; provided that notice and warning shall  
10250 be required as to any violation occurring more than 90 days after notice and warning has been given as  
10251 to a violation.

10252 § 3.2-5133. Failure to obey such notice and warning a misdemeanor.

10253 Any person owning or operating any place where any food or drink products are manufactured,  
10254 stored, deposited, or sold, failing to obey such notice and warning, or permitting filthy or unsanitary  
10255 conditions to exist after a notice of previous violation has been issued, provided the violation occurred  
10256 within 90 days after notice and warning has been issued, is guilty of a Class 1 misdemeanor.

10257 § 3.2-5134. Condemnation of unsafe food by Commissioner.

10258 If the Commissioner finds in any room, building, vehicle of transportation, or other structure, any  
10259 meat, seafood, poultry, vegetable, fruit, or other perishable articles of food, which are unsound or  
10260 contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health  
10261 or otherwise unsafe, then the articles of food shall be declared to be a nuisance, and the Commissioner  
10262 shall condemn or destroy the unsafe articles of food or render the unsafe articles of food to be  
10263 unsalable as human food.

10264 § 3.2-5135. Authority to seize food and dairy products; analysis; disposition of remainder.

10265 A. The Commissioner is authorized at all times to seize and take possession of any and all food and  
10266 dairy products, substitutes, or imitations kept for sale, exposed for sale, or held in possession or under  
10267 the control of any person that in the opinion of the Commissioner are believed to be in violation of any

10268 *provision of law.*

10269 *B. When the Commissioner seizes any goods pursuant to subsection A, he shall take a sample from*  
10270 *the goods for the purpose of analysis, box and seal the remainder, and leave the remainder in the*  
10271 *possession of the person from whom they were seized, subject to the determined disposition.*

10272 *C. Any person making a seizure under this section shall forward the sample taken to the Division of*  
10273 *Consolidated Laboratory Services. The Division of Consolidated Laboratory Services shall turn over the*  
10274 *sample to a qualified analyst who shall certify the results of the analysis. Their certificate shall be*  
10275 *prima facie evidence of the facts certified to, in an appropriate court where the sample may be offered*  
10276 *in evidence.*

10277 *§ 3.2-5136. Purchase of samples for analysis.*

10278 *Any person who exposes or offers for sale or delivers to a purchaser any food shall furnish within*  
10279 *business hours and upon tender and full payment of the selling price, a sample of such food, to the*  
10280 *Commissioner, and who shall apply to such manufacturer or vendor or person delivering such food to a*  
10281 *purchaser for a sample in sufficient quantity for the analysis of the article in his possession. Samples*  
10282 *may be purchased on the open market and shall be representative samples; the collector shall also note*  
10283 *the name of the vendor and agent through whom the sale was actually made, together with date of*  
10284 *purchase, and all samples not taken in unbroken and sealed original packages shall be sealed by the*  
10285 *collector in the presence of the vendor with a seal provided for the purpose.*

10286 *When possible, samples shall be unbroken and sealed original packages, or taken out of unbroken*  
10287 *and sealed original packages. Three like samples shall be obtained where the article is in the original*  
10288 *package, or if not in the original package the sample obtained shall be divided into three equal parts*  
10289 *and each part shall be labeled with the marks, brands, or tags upon the package, carton, container,*  
10290 *wrapper, or accompanying printed or written matter. One sample shall be delivered to the party from*  
10291 *whom purchased, or to the party guaranteeing such merchandise; two samples shall be sent to the*  
10292 *Commissioner, one of which is to be analyzed, as provided in this chapter, and the other shall be held*  
10293 *under seal by the Commissioner.*

10294 *§ 3.2-5137. Proceeding for forfeiture.*

10295 *If upon laboratory analysis it appears that the food or dairy products are adulterated, substituted,*  
10296 *misbranded, or imitated within the meaning of this chapter, the Commissioner may make complaint*  
10297 *before a magistrate, or other officer authorized to issue summons, having jurisdiction where the goods*  
10298 *were seized. The magistrate or other officer shall issue his summons to the person from whom the goods*  
10299 *were seized, directing him to appear before an appropriate court in such jurisdiction not less than six*  
10300 *nor more than 12 days from the date of issuing the summons and show cause why the goods should not*  
10301 *be condemned and disposed of. If the person from whom the goods were seized cannot be found, then*  
10302 *the summons shall be served upon the person then in possession of the goods. The summons shall be*  
10303 *served at least six days before the time of appearance mentioned therein. If the person from whom the*  
10304 *goods were seized cannot be found, and no one can be found in possession of the goods, and the*  
10305 *defendant shall not appear on the return day, then an appropriate court shall proceed in the cause in*  
10306 *the same manner as where a writ of attachment is returned not personally served upon any of the*  
10307 *defendants and none of the defendants shall appear upon the return day.*

10308 *§ 3.2-5138. Judgment as to goods seized; procedure before an appropriate court; appeal.*

10309 *Unless otherwise shown, or if the goods are found upon trial to be in violation of any of the*  
10310 *provisions of this chapter or other laws, it shall be the duty of the general district court to render*  
10311 *judgment that the seized property be forfeited to the Commonwealth, and that the goods be destroyed or*  
10312 *sold by the Commissioner for any purpose other than to be used for food. The mode of procedure*  
10313 *before the general district court shall be the same, as near as may be in civil proceedings. Either party*  
10314 *may appeal to the circuit court as appeals are taken from the general district court, but it shall not be*  
10315 *necessary for the Commonwealth to give any appeal bond.*

10316 *§ 3.2-5139. Disposition of proceeds from sale of such goods.*

10317 *The proceeds arising from any sale of seized property or goods shall be paid into the state treasury*  
10318 *and credited to the general fund. If the owner or party claiming the property or goods can produce and*  
10319 *prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party*  
10320 *residing within the Commonwealth from whom the articles were purchased, then the proceeds of the*  
10321 *sale, over and above the costs of seizure, forfeiture and sale, shall be paid to the owner or claimant to*  
10322 *reimburse him, to the extent of such surplus, for his actual loss resulting from the seizure and forfeiture*  
10323 *as shown by the invoice.*

10324 *§ 3.2-5140. Attorney for the Commonwealth to render legal assistance.*

10325 *It shall be the duty of the attorney for the Commonwealth when called upon by the Commissioner to*  
10326 *render any legal assistance in his power in proceeding under the provisions of this chapter.*

10327 *§ 3.2-5141. General duty of attorneys for the Commonwealth; compensation.*

10328 *Whenever a violation of any laws governing the manufacture and preparation for sale, storage, and*  
10329 *sale of articles used as food or condiment by human beings or animals, commonly known as the "pure*



10330 food" and "feeding stuffs laws," is reported by the Commissioner to any attorney for the Commonwealth  
 10331 it shall be the duty of the attorney for the Commonwealth to commence proceedings and prosecute  
 10332 without delay for the fines and penalties in cases prescribed and upon the termination of such  
 10333 proceedings to report in detail to the Commissioner, the results.

10334 For every conviction in any case instituted by any attorney for the Commonwealth upon the  
 10335 complaint of the Commissioner, the attorney for the Commonwealth prosecuting any such case, after he  
 10336 has reported the results to the Commissioner, shall be entitled to a fee of \$10 that shall be taxed as a  
 10337 part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefor  
 10338 against the defendant; and the fee shall be paid notwithstanding any law to the contrary limiting or  
 10339 prescribing the compensation and fees of attorneys for the Commonwealth.

10340 In any case of a sale or delivery of goods in violation of the provisions of the pure food or feeding  
 10341 stuffs laws, the person making such sale or delivery, may be prosecuted either in the county or city  
 10342 where the sale or delivery originated, or in the county or city where the illegal goods were found by the  
 10343 Commissioner.

10344 § 3.2-5142. Punishment for hindering Commissioner.

10345 Any person who shall willfully hinder or obstruct the Commissioner in the exercise of the powers  
 10346 conferred upon him by this chapter is guilty of a Class 2 misdemeanor.

10347 § 3.2-5143. Enforcement against companies.

10348 When construing and enforcing the provisions of this chapter and Chapters 52 (§ 3.2-5200 et seq.)  
 10349 and 54 (§ 3.2-5400 et seq.), the act, omission, or failure of any officer, agent, or other individual acting  
 10350 for or employed by any partnership, corporation, company, society, or association within the scope of  
 10351 his employment or office, shall in every case be also deemed the act, omission, or failure of such  
 10352 partnership, corporation, company, society, or association, as well as that of the individual.

10353 § 3.2-5144. Exemption from civil liability in certain cases.

10354 A. Any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer  
 10355 of food, including a grocery, convenience, or other store selling food or food products, who donates  
 10356 food to any food bank or any second harvest certified food bank or food bank member charity that is  
 10357 exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by  
 10358 the Department and, where required by ordinance, by the State Department of Health, for use or  
 10359 distribution by the organization shall be exempt from civil liability arising from any injury or death  
 10360 resulting from the nature, age, condition, or packaging of the donated food. The exemption of this  
 10361 section shall not apply if the injury or death directly results from the gross negligence or intentional act  
 10362 of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with  
 10363 the regulations of the Board of Health with respect to the safe preparation, handling, protection, and  
 10364 preservation of food, including necessary refrigeration or heating methods, pursuant to the provisions of  
 10365 § 35.1-14.

10366 B. Any farmer who gratuitously allows persons to enter upon his own land for purposes of removing  
 10367 any crops remaining in his fields following the harvesting thereof, shall be exempt from civil liability  
 10368 arising out of any injury or death resulting from the nature or condition of such land or the nature,  
 10369 age, or condition of any such crop. The exemption of this section shall not apply if the injury or death  
 10370 directly results from the gross negligence or intentional act of the farmer.

10371 § 3.2-5145. Punishment for failure to comply with requirements of certain chapters.

10372 Any person who refuses to comply upon demand with the requirements of this chapter and Chapters  
 10373 52 (§ 3.2-5200 et seq.) and 54 (§ 3.2-5400 et seq.) who shall impede, obstruct, hinder, or otherwise  
 10374 prevent or attempt to prevent any inspector or other person in the performance of his duty in connection  
 10375 with such chapters, is guilty of a Class 2 misdemeanor, unless otherwise specified, and such fines, less  
 10376 the legal costs, shall be paid into the state treasury.

## CHAPTER 52.

### MILK, MILK PRODUCTS, AND DAIRIES.

#### Article I.

#### General Provisions.

10381 § 3.2-5200. Duty of Commissioner to foster dairy industry.

10382 It shall be the duty of the Commissioner to foster and encourage the dairy industry of the  
 10383 Commonwealth, and for that purpose he shall investigate the general conditions of the creameries,  
 10384 cheese factories, condensed milk factories, skimming stations, milk stations, and farm dairies in the  
 10385 Commonwealth, with full power to enter upon any premises for such investigation, with the object in  
 10386 view of improving the quality and creating and maintaining uniformity of the dairy products of the  
 10387 Commonwealth. Should it become necessary in the judgment of the Commissioner, he may cause  
 10388 instruction to be given in any facility or in any locality of the Commonwealth, in order to promote the  
 10389 proper feeding and care of cows, or the practical operation of any plant producing dairy products, and  
 10390 in order to procure such a uniform and standard quality of dairy products in the Commonwealth.

**10391** § 3.2-5201. *Conformity with regulations of U.S. Department of Health and Human Services and*  
**10392** *Department of Agriculture; compliance with Administrative Process Act.*

**10393** *In adopting regulations for the purpose of sanitation and to prevent deception, the Board shall be*  
**10394** *guided by those regulations recommended by the U.S. Department of Health and Human Services and*  
**10395** *the U.S. Department of Agriculture. The definitions and standards so adopted may conform, so far as*  
**10396** *practical, to the definitions and standards adopted or recommended by the Secretary of the U.S.*  
**10397** *Department of Health and Human Services or the U.S. Department of Agriculture. The regulations*  
**10398** *authorized by §§ 3.2-5206, 3.2-5213, and by this section shall be adopted in accordance with the*  
**10399** *Administrative Process Act (§ 2.2-4000 et seq.).*

**10400** § 3.2-5202. *Sale of products not subject to local supervision.*

**10401** *Products produced, processed, or manufactured under the regulations adopted under this chapter*  
**10402** *may be sold in all localities in the Commonwealth and shall not be subject to regulation, by ordinance*  
**10403** *or otherwise, supervision or inspection of any political subdivision wherein the products are produced,*  
**10404** *processed, manufactured, or sold.*

**10405** § 3.2-5203. *Importing of products.*

**10406** A. *No regulation adopted under this chapter shall be construed to prohibit the sale within the*  
**10407** *Commonwealth of any product that is produced outside of the Commonwealth under laws or regulations*  
**10408** *of the exporting state or political subdivision that are substantially equivalent to regulations adopted*  
**10409** *under this article and that are enforced with equal effectiveness.*

**10410** B. *No Grade A raw milk shall be imported into the Commonwealth by any person who does not*  
**10411** *possess a permit issued under conditions prescribed by the Board. The Board shall adopt regulations for*  
**10412** *the importation of raw bulk milk from points beyond routine inspection of the Commonwealth to insure*  
**10413** *the quality of milk and milk products, to determine volume of product shipped into the Commonwealth,*  
**10414** *to be assured of the original source of production, and to provide for the best interest of the*  
**10415** *Commonwealth, and for the protection of the consuming public.*

**10416** § 3.2-5204. *Warning and punishment of persons using or furnishing impure milk.*

**10417** *Whenever it is determined by the Commissioner that any person is using, selling, or furnishing to*  
**10418** *any facility, milk dealer, the retail trade, or to any consumer of milk, any impure or unwholesome milk*  
**10419** *or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy conditions of the*  
**10420** *premises where cows are kept or by the unsanitary or filthy care of handling of the cows, or from the*  
**10421** *use of unclean utensils or from unwholesome food, or from any other cause, such person shall first be*  
**10422** *notified and warned by the Commissioner not to use, sell, or furnish such milk or cream to any facility,*  
**10423** *milk dealers, the retail trade, or to any consumer of milk. Any person who fails to obey such notice and*  
**10424** *warning and continues to use, sell, or furnish to any skimming station, creamery, cheese factory,*  
**10425** *condensed milk factory, farm dairy, milk dealer, or to the retail trade impure or unwholesome milk or*  
**10426** *cream, is guilty of a Class 2 misdemeanor.*

**10427** § 3.2-5205. *Injunctions.*

**10428** *If any person violates any provision of this article or the regulations adopted hereunder, then either*  
**10429** *the Commissioner or the State Health Commissioner may petition any appropriate circuit court for relief*  
**10430** *by injunction, without being compelled to allege or prove that an adequate remedy at law does not*  
**10431** *exist.*

**10432** Article 2.

**10433** *Standards of Quality, Grading, and Sanitary Standards.*

**10434** § 3.2-5206. *Board authorized to establish standards and adopt regulations; guidance of State Health*  
**10435** *Commissioner.*

**10436** A. *The Board is authorized to establish definitions, standards of quality and identity, and to adopt*  
**10437** *and enforce regulations dealing with the issuance of permits, production, importation, processing,*  
**10438** *grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products,*  
**10439** *and those products manufactured or sold in semblance to or as substitutes for milk, milk products,*  
**10440** *market milk, market milk products. Regulations concerning the processing and distributing of Grade A*  
**10441** *market milk and Grade A market milk products shall be adopted with the advice and guidance of the*  
**10442** *State Health Commissioner. The Board shall adopt regulations for the issuance of the permits referred*  
**10443** *to in § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this*  
**10444** *article, and shall adopt regulations concerning the conditions under which any additional permits shall*  
**10445** *be issued.*

**10446** B. *In adopting any regulation pursuant to this section, the Board may adopt by reference:*

**10447** 1. *Any regulation or part thereof under federal law that pertains to milk or milk products, amending*  
**10448** *the federal regulation as necessary for intrastate application.*

**10449** 2. *Any model ordinance or regulation issued under federal law, including the Pasteurized Milk*  
**10450** *Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the U.S.*  
**10451** *Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing*  
**10452** *Recommended Requirements (hereafter the USDA Recommended Requirements), amending it as*

10453 necessary for intrastate application and to: (i) require milk on each dairy farm to be cooled and stored  
 10454 at a temperature of 40 degrees Fahrenheit or less, but not frozen; (ii) require the use of recording  
 10455 thermometers and interval timers on every milk storage tank installed on a permitted Grade A milk  
 10456 dairy farm; (iii) specify the design, fabrication, installation, inspection, and record keeping necessary for  
 10457 the proper use of such thermometers and timers; (iv) establish a definition for small-scale processors of  
 10458 cheese under the dairy plant processing requirements contained in the USDA Recommended  
 10459 Requirements; and (v) create exemptions for small-scale processors of cheese from the USDA  
 10460 Recommended Requirements regarding processing requirements for dairy plants, provided such  
 10461 exemptions do not compromise food safety.

10462 3. Any reference, standard, or part thereof relating to milk, milk products, or milk production  
 10463 published by the American Society of Agricultural Engineers, the American Public Health Association,  
 10464 the American Society of Mechanical Engineers, or the International Association of Food Protection.

10465 4. Any method of analysis relating to milk or milk products including any method of analysis  
 10466 published by the United States Public Health Service, the Association of Official Analytical Chemists, or  
 10467 the American Public Health Association.

10468 C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in  
 10469 the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the  
 10470 regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the  
 10471 Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant  
 10472 thereto shall apply to the adoption of any regulation pursuant to this section. Prior to adopting any  
 10473 regulation pursuant to this section, the Board shall publish a notice of opportunity to comment in the  
 10474 Virginia Register of Regulations. The notice of opportunity to comment shall contain: (i) a summary of  
 10475 the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation;  
 10476 and (iii) the name, address, and telephone number of the agency contact person responsible for  
 10477 receiving public comments. The notice of opportunity to comment shall be made at least 90 days in  
 10478 advance of the last date prescribed in the notice for submittals of public comment. The legislative review  
 10479 provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under  
 10480 this section. The Board shall consider and keep on file all public comments received for any regulation  
 10481 adopted pursuant to this section.

10482 D. Notwithstanding the provisions of subsections B and C, any permits that may be issued or  
 10483 regulations that may be adopted for the sale or manufacture of cheese from milk from any species not  
 10484 required to be permitted or regulated in intrastate commerce prior to July 1, 2001, under this article,  
 10485 shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such  
 10486 regulations or permits apply to persons who manufacture less than 1,000 pounds of such cheese  
 10487 annually.

10488 § 3.2-5207. Powers and duties of Commissioner; obstruction unlawful.

10489 The Commissioner shall administer and enforce the regulations adopted pursuant to § 3.2-5206  
 10490 except as provided in § 3.2-5208. He is empowered, in the performance of his duties, to enter upon and  
 10491 to have free access to any establishment or area subject to the provisions of this article, or the  
 10492 regulations adopted hereunder. It shall be unlawful for any person to hinder, obstruct, or interfere with  
 10493 the Commissioner in the performance of his duties under this article or under the regulations adopted  
 10494 pursuant to this article.

10495 § 3.2-5208. Powers and duties of State Health Commissioner; obstruction unlawful.

10496 The State Health Commissioner, pursuant to the regulations adopted pursuant to § 3.2-5206, shall  
 10497 issue permits to all plants that process and distribute Grade A market milk and Grade A market milk  
 10498 products. The State Health Commissioner shall also enforce the regulations adopted under § 3.2-5206 in  
 10499 all plants from the point of delivery at the plant to the consumer. He is empowered, in the performance  
 10500 of his duties, to enter upon and to have free access to any establishment or area subject to the  
 10501 provisions of this article, or the regulations adopted hereunder, pertaining to the processing and  
 10502 distribution of Grade A market milk, Grade A market milk products, ungraded milk products, and those  
 10503 products manufactured in semblance to or as substitutes in Grade A market milk and Grade A market  
 10504 milk products plants from the point of delivery at the plant to the consumer. It shall be unlawful for any  
 10505 person to hinder, obstruct, or interfere with the State Health Commissioner in the performance of his  
 10506 duties under this article or under the regulations adopted hereunder.

10507 § 3.2-5209. Penalties.

10508 Any violation of the provisions of this article, or the regulations adopted hereunder, or failure to  
 10509 comply with such provisions or regulations, is a Class 1 misdemeanor and punished as provided by law.  
 10510 Each day of such failure or violation shall be a separate offense and shall be punished as such.

10511 § 3.2-5210. Civil penalties.

10512 A. In addition to the penalties prescribed in § 3.2-5209, any person violating any provision of this  
 10513 article or regulation adopted hereunder may be assessed a civil penalty by the Commissioner for each

10514 violation in an amount not to exceed \$1,000. Any civil penalty may be in lieu of suspension of a permit  
10515 issued pursuant to § 3.2-5206. In determining the amount of any civil penalty, the Commissioner shall  
10516 give due consideration to: (i) the previous violations committed by the person; (ii) the seriousness of the  
10517 violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve  
10518 compliance with this article or regulation adopted hereunder after notification of the violation. Any civil  
10519 penalty shall be in addition to any payment that may be required for the wholesale value of all milk and  
10520 milk products that must be destroyed as a consequence of such violation.

10521 B. A civil penalty may be assessed by the Commissioner only after the Commissioner has given the  
10522 person charged with a violation an opportunity for a public hearing. Where such a public hearing has  
10523 been held, the Commissioner shall make findings of fact and issue a written decision as to the  
10524 occurrence of the violation and the amount of the penalty that is warranted, incorporating, when  
10525 appropriate, an order requiring that the penalty be paid. When appropriate, the Commissioner shall  
10526 consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing  
10527 under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process  
10528 Act (§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail himself of the  
10529 opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the  
10530 Commissioner determines that a violation has occurred and the amount of the penalty warranted, and  
10531 issues an order requiring that the penalty be paid.

10532 C. Civil penalties assessed under this section shall be paid into the general fund of the state  
10533 treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall  
10534 include provisions for a person to consent to abatement of the alleged violation and pay a penalty or  
10535 negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged  
10536 violation.

10537 D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon  
10538 certification of such orders by the Commissioner. Such orders may be appealed in accordance with the  
10539 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

10540 E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition  
10541 of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases,  
10542 the Commissioner may serve a suitable notice of warning in writing when he believes that the public  
10543 interest will be served by so doing.

10544 F. The penalty provisions of this section shall not apply to violations of this article or any regulation  
10545 adopted hereunder with respect to excessive drug residue. The penalty for any such violation shall be as  
10546 provided in § 3.2-5211.

10547 § 3.2-5211. Excessive drug residue; penalty.

10548 A. For the purposes of this section:

10549 "Dairy farm" means any farm producing Grade A milk or milk for manufacturing purposes.

10550 "Excessive drug residue" means drug residue that is: (i) greater than the value specified as a safe  
10551 level by the U.S. Food and Drug Administration; (ii) equal to or greater than the value specified as the  
10552 minimum actionable level by the U.S. Food and Drug Administration; or (iii) greater than the value  
10553 specified as the maximum tolerance level established by federal law. In the event that no safe level,  
10554 actionable level, or tolerance level for drug residue has been established under federal law, any drug  
10555 residue shall be deemed to exceed the safe level, minimum actionable level, or tolerance level of drug  
10556 residue.

10557 "Official drug test" means a test: (i) performed by a laboratory that is certified by the Interstate Milk  
10558 Shippers (IMS) and listed as certified in the IMS List Sanitation Compliance and Enforcement Ratings  
10559 of Interstate Milk Shippers published by the U.S. Food and Drug Administration; (ii) performed in a  
10560 laboratory operated by the Commonwealth; or (iii) performed using a method that has been reviewed  
10561 and accepted by the United States Public Health Service, the Association of Official Analytical Chemists,  
10562 or the American Public Health Association.

10563 B. Where an official drug test detects the presence of excessive drug residue in milk produced at a  
10564 dairy farm, the Commissioner may: (i) assess a civil penalty not to exceed \$100 against the operator of  
10565 the dairy farm; or (ii) order the suspension of any permit issued to the operator pursuant to § 3.2-5206.  
10566 No civil penalty shall be assessed under this section unless the operator of the dairy farm has been  
10567 given the opportunity for an informal fact-finding conference pursuant to § 2.2-4019. If the matter is not  
10568 resolved by the informal fact-finding conference or the operator of the dairy farm is dissatisfied with the  
10569 Commissioner's decision from the informal fact-finding conference, the operator may request a second  
10570 informal fact-finding conference. Any such request shall be submitted by the operator to the  
10571 Commissioner within 30 days after the operator's receipt of the decision. The Commissioner in his  
10572 discretion may grant or deny such request.

10573 Nothing in this section shall be construed to require the Commissioner to hold a formal hearing  
10574 pursuant to § 2.2-4020 prior to the assessment of a civil penalty or the suspension of a permit pursuant  
10575 to this section.

10576 C. If the Commissioner assesses a civil penalty pursuant to this section and the operator of the dairy  
10577 farm fails to pay the civil penalty in a timely manner, the Commissioner shall suspend any permit issued  
10578 pursuant to § 3.2-5206 to the operator.

10579 D. Civil penalties assessed under this section shall be paid into the general fund of the state  
10580 treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall  
10581 include provisions for a person to consent to abatement of the alleged violation and pay a penalty or  
10582 negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged  
10583 violation.

### 10584 Article 3.

#### 10585 Ice Cream and Similar Products.

10586 § 3.2-5212. Authority of Board to establish standards, adopt regulations.

10587 The Board is authorized to establish definitions, standards of quality and identity, and to adopt and  
10588 enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream,  
10589 ice milk, frozen custards, sherbets, water ices, related foods, other similar products, and those products  
10590 manufactured or sold in semblance to or as substitutes.

10591 § 3.2-5213. Commissioner to enforce article; right of entry.

10592 The Commissioner shall administer and enforce the regulations adopted pursuant to this article. He  
10593 is empowered, in the performance of his duties, to enter upon and to have free access to any  
10594 establishment or area subject to the provisions of this article or the regulations adopted hereunder.

10595 § 3.2-5214. Permits; delegation of enforcement of article to State Health Commissioner for  
10596 restaurants.

10597 Any person engaged in the manufacture in the Commonwealth of any of the foods listed in  
10598 § 3.2-5212 shall apply to the Commissioner on an application form prescribed by him for a permit to  
10599 manufacture such foods or any of them.

10600 A separate application shall be made for each establishment where such foods are manufactured or  
10601 are to be manufactured. The Commissioner may by agreement delegate the enforcement of this article to  
10602 the State Health Commissioner for restaurants as defined in § 35.1-1. Such agreement shall provide for  
10603 the combining of the permit required by this article and the license required by § 35.1-18.

10604 The Commissioner, upon receipt and approval of such application properly executed, shall issue a  
10605 permit authorizing the applicant to engage in the manufacture of such foods as are described in the  
10606 application. The Commissioner may, after a full hearing, refuse to issue a permit or renew a permit, or  
10607 may suspend or revoke a permit in the case of any establishment that does not meet the requirements of  
10608 this article or of any regulation adopted for its administration and enforcement. Permits shall be  
10609 renewable on July 1 of each year.

10610 § 3.2-5215. Detention of adulterated, misbranded products.

10611 Whenever any product subject to this article is found by the Commissioner upon any premises where  
10612 it is held and there is reason to believe that the product is adulterated or misbranded in violation of the  
10613 regulations adopted by the Board pursuant to this article, or that such product has been or is intended  
10614 to be distributed in violation of regulations, the product may be detained for a period not to exceed 20  
10615 days, pending action under § 3.2-5216 of this article, and shall not be moved by any person from the  
10616 place at which it is located when detained, until released by the Commissioner.

10617 § 3.2-5216. Condemnation of adulterated, misbranded products.

10618 Any product referred to by § 3.2-5215 shall be liable to be proceeded against and condemned.

10619 At any time prior to the expiration of the 20-day detention period provided by § 3.2-5215, the  
10620 Commissioner shall notify the attorney for the Commonwealth for the city or county where such  
10621 detention was made in writing. Upon receiving written notification, the attorney for the Commonwealth  
10622 shall forthwith file in the name of the Commonwealth any information against the detained product in  
10623 the clerk's office of the circuit court of the county or city where the detention was made. Upon the filing  
10624 of such information, the clerk of court shall forthwith issue a warrant directing the sheriff to seize the  
10625 detained product and see to its transportation to a suitable place of storage that, if necessary, may be  
10626 outside of the county or city served by the sheriff. Should the attorney for the Commonwealth, for any  
10627 reason, fail to file such information within five days after receipt of written notice of detention of the  
10628 product, the same may, at any time within 30 days thereafter be filed by the Attorney General and the  
10629 proceedings thereon shall be the same as if filed by the attorney for the Commonwealth.

10630 Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of  
10631 the seized product, and shall petition that the same be condemned and sold and the proceeds disposed  
10632 of according to law, and that all persons concerned or interested be cited to appear and show cause  
10633 why such product should not be condemned and sold to enforce the forfeiture. After the filing of the  
10634 information, the attorney for the Commonwealth shall apply to the judge of the court wherein the  
10635 information was filed for a hearing on the matters contained in the information. The judge of the court  
10636 shall move the cause to the head of the docket and the hearing shall be had as soon as practical to do

10637 so.

10638 *The owner of and all persons in any manner then indebted or liable for the purchase price of the*  
 10639 *product and any person having a lien thereon, if they be known to the attorney who files the*  
 10640 *information, shall be made parties defendant thereto, and shall be served with the notice provided for,*  
 10641 *in the manner provided by law for serving a notice, at least 10 days before the day specified for the*  
 10642 *hearing on the information, if they are residents of the Commonwealth; and if they are unknown or*  
 10643 *nonresidents, or cannot with reasonable diligence be found in the Commonwealth, they shall be deemed*  
 10644 *sufficiently served by publication of the notice once a week for two successive weeks in some newspaper*  
 10645 *published in the county or city, or if there be none published therein, then in some newspaper having*  
 10646 *general circulation, and a notice shall be sent by registered mail of such seizure to the last known*  
 10647 *address of the owner of the detained product.*

10648 *Any person claiming to be the owner of such product or to hold a lien thereon, may appear at any*  
 10649 *time before final judgment of the trial court, and be made a party defendant to the information so filed,*  
 10650 *which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such*  
 10651 *defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims*  
 10652 *to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in*  
 10653 *either case, such defendant shall set forth fully any reason or cause that he may have to show against*  
 10654 *the forfeiture of the product.*

10655 *If such product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale*  
 10656 *as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other*  
 10657 *proper expenses, shall be paid into the state treasury, but the product shall not be sold contrary to the*  
 10658 *regulations of the Board; provided, that upon the execution and delivery of a good and sufficient bond*  
 10659 *conditioned that the product shall not be sold or otherwise disposed of contrary to the regulations of the*  
 10660 *Board, the court may direct that such product be delivered to a claimant thereof, who may have*  
 10661 *appeared in the proceedings, subject to such supervision by the Commissioner as is necessary to insure*  
 10662 *compliance with the applicable regulations. When a decree of condemnation is entered against a*  
 10663 *product and it is released under bond, or destroyed, court costs and fees, and storage and other proper*  
 10664 *expenses may, as the court deems just, be awarded against the person, if any, intervening as claimant of*  
 10665 *the product.*

10666 *If a claimant denies for any reason that the product to be condemned is subject to condemnation as*  
 10667 *provided by this section, and shall demand a trial by jury of the issue thus made, then the court shall,*  
 10668 *under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed*  
 10669 *by law. If the jury finds in favor of the claimant, or if the court, trying such issue without a jury, so*  
 10670 *finds, the judgment of the court shall be to entirely relieve the product from forfeiture, and no costs*  
 10671 *shall be taxed against such claimant.*

10672 § 3.2-5217. Penalties.

10673 *Any violation of the provisions of this article or the regulations adopted hereunder, or failure to*  
 10674 *comply with such provisions or regulations, is a Class 1 misdemeanor and punished as provided by law.*  
 10675 *Each day of such failure or violation shall be a separate offense as such.*

10676 Article 4.

10677 *Babcock and Other Machine Tests.*

10678 § 3.2-5218. Definitions.

10679 *As used in this article, unless the context requires a different meaning:*

10680 *"Holder" means a corporation, association, partnership or two or more persons having a joint or*  
 10681 *common interest.*

10682 § 3.2-5219. *No test or apparatus other than Babcock or other centrifugal machines to be used unless*  
 10683 *approved by Board.*

10684 *No test or apparatus shall be used for the purpose of determining the composition of milk or cream*  
 10685 *as a basis for payment in buying or selling milk or cream or dairy products other than the Babcock or*  
 10686 *other centrifugal machines unless such other test or apparatus has been approved for such use by*  
 10687 *regulation of the Board. In the event that the Board approves such other test or apparatus for such use,*  
 10688 *then the provisions of this article shall apply, mutatis mutandis, to such approved test or apparatus.*

10689 § 3.2-5220. *Inspection of centrifugal machines and scales; condemnation.*

10690 *Every Babcock or other centrifugal machine, or cream test or butterfat test scale, used in the*  
 10691 *Commonwealth by any inspector of milk or cream or by any person in any milk inspection laboratory*  
 10692 *for determining the composition of milk or cream for purposes of inspection, or by any person in any*  
 10693 *milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory,*  
 10694 *laboratory, or other place for determining the composition or value of milk or cream as a basis for*  
 10695 *payment in buying or selling, shall be subject to inspection at least once in each year by the*  
 10696 *Commissioner. The Commissioner may condemn any Babcock or other centrifugal scale that is, in his*  
 10697 *opinion, not giving accurate results. No Babcock or other centrifugal machine or scale that has been*  
 10698 *condemned by the Commissioner shall be used in the Commonwealth by any person for determining the*

10699 composition or value of milk or cream, unless the machine or scale has been changed and approved by  
10700 the Commissioner.

10701 § 3.2-5221. Manipulators of machines to procure certificates; renewal of certificate; revocation by  
10702 Commissioner.

10703 No inspector of milk or cream, and no person in any milk inspection laboratory, shall manipulate the  
10704 Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream  
10705 for purposes of inspection without first obtaining a certificate from the Commissioner that he is  
10706 competent to perform such work. No person in any milk depot, ice cream factory, confectionery,  
10707 creamery, cheese factory, condensed milk factory, or other place in the Commonwealth shall manipulate  
10708 the Babcock or other centrifugal machine for the purpose of determining the composition or value of  
10709 milk or cream, or shall take samples or weigh milk or cream, as a basis for payment in buying or  
10710 selling, without first obtaining a certificate from the Commissioner that he is competent to perform such  
10711 work. All such certificates shall be renewed annually without further examination at the discretion of the  
10712 Commissioner upon application. Unless a person holding a valid tester's, weigher's, and sampler's  
10713 certificate renews his certificate within one year after its expiration date, he shall be required to pass  
10714 the applicable examination before a new certificate shall be issued. If any holder of a certificate is  
10715 notified by the Commissioner to correct his use of a Babcock or other centrifugal machine, or his  
10716 method of sampling or weighing, and the person or holder of a certificate notified fails to comply with  
10717 the notice and correct his use of a Babcock or other centrifugal machine, or his methods of sampling or  
10718 weighing, he shall be deemed guilty of a violation of the provisions of this article, and the  
10719 Commissioner may forfeit his certificate or assess a civil penalty as provided in § 3.2-5233. No holder  
10720 of a certificate whose authority to manipulate a Babcock or other centrifugal machine or to sample or  
10721 weigh milk or cream has been revoked by the Commissioner shall thereafter manipulate in the  
10722 Commonwealth any centrifugal machine or sample or weigh milk or cream for the purposes herein  
10723 specified until his certificate has been renewed.

10724 § 3.2-5222. To whom certificates issued.

10725 The Commissioner is authorized to issue certificates of competency to persons desiring to manipulate  
10726 the Babcock or other centrifugal machine or to sample or weigh milk or cream who may present  
10727 certificates of competency properly filled out and signed by the professor of dairy science or other  
10728 authorized officer of the Virginia Polytechnic Institute and State University, and to other persons as, in  
10729 the opinion of the Commissioner, are competent to manipulate the machines, and to sample or weigh  
10730 milk or cream.

10731 § 3.2-5223. Regulations governing applications for certificates; revocation by Board; standards and  
10732 regulations.

10733 The Board is authorized to adopt and enforce regulations governing applications for certificates and  
10734 the granting of certificates. The Board may, in its discretion, revoke the authority of any holder of a  
10735 certificate who, in its opinion, is not correctly manipulating any Babcock or other centrifugal machine,  
10736 or correctly sampling or weighing milk or cream or is using dirty or otherwise unsatisfactory glassware  
10737 or utensils. The Board is authorized to fix such standards and to adopt such regulations as may be  
10738 deemed necessary to carry out the provisions of this article.

10739 § 3.2-5224. Regulations governing equipment, standards and procedures.

10740 The Board shall have authority to adopt and enforce regulations governing the equipment, standards,  
10741 and procedures used in the receiving, weighing, measuring, sampling, and testing of milk or other fluid  
10742 dairy products when the results are to be used for the purpose of inspection, check testing, or as a basis  
10743 for payment in buying or selling.

10744 § 3.2-5225. Capacity of standard measurers.

10745 In the use of the Babcock or any other centrifugal machine, the standard milk measurer or pipettes  
10746 shall have a capacity of 17.6 cubic centimeters and the standard test tubes or bottles for milk shall have  
10747 a capacity of two cubic centimeters for each 10 percent marked on the necks.

10748 § 3.2-5226. Units for testing cream.

10749 Cream shall be tested by weight and the standard units for testing shall be 18 grams, and nine  
10750 grams. It is a violation of the provisions of this article to use any other standard of milk or cream  
10751 measure where milk or cream is purchased by or furnished to creameries or cheese factories, and where  
10752 the value of the milk or cream is determined by the percent of butterfat contained by the Babcock or  
10753 other centrifugal test or cream test or butterfat test scales.

10754 § 3.2-5227. Sampling to determine butterfat by composite tests.

10755 In sampling milk or cream for composite tests to determine the percent of butterfat contained, no  
10756 such sample or sampling shall be lawful unless a sample is taken from each weighing, and the quantity  
10757 used shall be proportioned to the total weight of the milk or cream tested.

10758 § 3.2-5228. Test of measurers; inspection of machines and scales; right of entry.

10759 The Commissioner shall inspect or cause to be inspected at least once each year every Babcock or

10760 *other centrifugal machine or cream test or butterfat test scales used in the Commonwealth by an*  
 10761 *inspector of milk or cream or by any person in any milk inspection laboratory for purposes of*  
 10762 *inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese*  
 10763 *factory, condensed milk factory, or other place for determining the composition or value of milk or*  
 10764 *cream as a basis for payment in buying or selling. The Commissioner is further authorized to enter*  
 10765 *upon any premises in the Commonwealth where any centrifugal machine or cream test and butterfat test*  
 10766 *scales are used to inspect the devices and to ascertain if the provisions of law are complied with.*

10767 § 3.2-5229. *False manipulation and reading of tests.*

10768 *Any person who shall, by himself or as the officer, servant, agent, or employee of any person falsely*  
 10769 *manipulate, underread, or overread the Babcock test or any other apparatus used for the purpose of*  
 10770 *determining the amount of milk fat in milk or cream, or who shall make any false determination of any*  
 10771 *test or apparatus used for the purpose of determining the amount of milk fat in any dairy products, is*  
 10772 *guilty of a Class 1 misdemeanor.*

10773 § 3.2-5230. *Tender of payment as evidence of test.*

10774 *The tender of payment for milk or cream at any given test, shall constitute prima facie evidence that*  
 10775 *such test was made.*

10776 § 3.2-5231. *Commissioner to enforce article; persons exempt.*

10777 *It shall be the duty of the Commissioner to see that the provisions of this article are complied with,*  
 10778 *and he may in his discretion prosecute any person violating any of its provisions. But the provisions of*  
 10779 *this article shall not be construed to affect a person using any centrifugal or other machine or test in*  
 10780 *determining the composition or value of milk or cream when such determination is made for the*  
 10781 *information of that person only and not for purposes of inspection, or as a basis for payment in buying*  
 10782 *or selling.*

10783 § 3.2-5232. *Obstructing Commissioner; violations of article.*

10784 *Any person who shall hinder or obstruct the Commissioner in the discharge of the authority or duty*  
 10785 *imposed upon him by this article, and any person violating any of its provisions is guilty of a Class 2*  
 10786 *misdemeanor.*

10787 § 3.2-5233. *Civil penalties.*

10788 *A. In addition to the penalties prescribed in § 3.2-5229 or 3.2-5232, any person violating any*  
 10789 *provision of this article or regulation adopted hereunder may be assessed a civil penalty by the*  
 10790 *Commissioner for each violation in an amount not to exceed \$15,000. In determining the amount of any*  
 10791 *civil penalty, the Commissioner shall give due consideration to: (i) the previous violations committed by*  
 10792 *the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person*  
 10793 *charged in attempting to achieve compliance with this article or the regulations adopted hereunder after*  
 10794 *notification of the violation. Any civil penalty shall be in addition to any payment that may be required*  
 10795 *for the wholesale value of all milk and milk products that must be destroyed as a consequence of such*  
 10796 *violation.*

10797 *B. A civil penalty may be assessed by the Commissioner only after he has given the person charged*  
 10798 *with a violation an opportunity for a public hearing. Where such a public hearing has been held, the*  
 10799 *Commissioner shall make findings of fact and issue a written decision as to the occurrence of the*  
 10800 *violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order*  
 10801 *therein requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such*  
 10802 *hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this*  
 10803 *section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act*  
 10804 *(§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail himself of the*  
 10805 *opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the*  
 10806 *Commissioner determines that a violation has occurred and the amount of the penalty warranted, and*  
 10807 *issues an order requiring that the penalty be paid.*

10808 *C. Civil penalties assessed under this section shall be paid into the general fund of the state*  
 10809 *treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall*  
 10810 *include provisions for a person to consent to abatement of the alleged violation and pay a penalty or*  
 10811 *negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged*  
 10812 *violation.*

10813 *D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon*  
 10814 *certification of such orders by the Commissioner. Such orders may be appealed in accordance with*  
 10815 *provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

10816 *E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition*  
 10817 *of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases,*  
 10818 *the Commissioner may serve a suitable notice of warning in writing when he believes that the public*  
 10819 *interest will be served by so doing.*

10820 **CHAPTER 53.**  
 10821 **EGGS AND HATCHERY PRODUCTS.**



- 10822 § 3.2-5300. Application of chapter.
- 10823 This chapter shall apply to the marketing of eggs to consumers, institutional consumers, and  
10824 retailers.
- 10825 § 3.2-5301. Definitions.
- 10826 As used in this chapter, unless the context requires a different meaning:
- 10827 "Consumer" means any person who acquires eggs for consumption in his own household and not for  
10828 resale.
- 10829 "Eggs" mean eggs in the shell that are the product of domesticated chickens.
- 10830 "Grade" means specifications defining the limits of variation in quality of eggs in such a manner as  
10831 to differentiate among classes of eggs, and the letter, number, or other symbol by which references may  
10832 be made.
- 10833 "Institutional consumer" means a restaurant, hotel, boardinghouse, or any other business, facility, or  
10834 place in which eggs are prepared or offered as food to patrons, residents, inmates, or patients.
- 10835 "Market" means sell, offer for sale, give in the channels of commerce, barter, exchange, or distribute  
10836 in any manner.
- 10837 "Processor" includes any person who cleans, candles, grades, sizes, and packs shell eggs for human  
10838 consumption.
- 10839 "Retailer" means any person who markets eggs to consumers.
- 10840 "Standard" means specifications of the physical characteristics or any or all of the component parts  
10841 of individual eggs.
- 10842 § 3.2-5302. Standards, grades, and size-weight classes; cracked or checked eggs; sale of inedible  
10843 eggs.
- 10844 A. The Board shall adopt standards, grades, and size-weight classes including standards for the term  
10845 "ungraded" for eggs marketed in the Commonwealth. In administering this chapter, the Department  
10846 shall have due regard for the desirability of uniformity in the standards, grades, and size-weight classes  
10847 for eggs moving in intrastate and interstate commerce.
- 10848 B. Cracked or checked eggs labeled as "cracks" may be sold only by producers or processors  
10849 directly to consumers or for further processing, excluding institutional consumers.
- 10850 C. The sale or offering for sale of inedible eggs as defined in the grades adopted by the  
10851 Commissioner is prohibited except that incubated eggs may be sold for commercial purposes other than  
10852 for human consumption provided such incubated eggs are marked, packaged, and disposed of in a  
10853 manner approved by the Commissioner.
- 10854 § 3.2-5303. Requirements for eggs sold as fresh or with similar description.
- 10855 The term "fresh eggs," or any legend, symbol, picture, representation or device declaring or tending  
10856 to convey the impression that the eggs are fresh may be applied only to eggs meeting the requirements  
10857 of grade A quality or better as established by the Board for fresh eggs.
- 10858 § 3.2-5304. Labeling and advertising.
- 10859 No label, container, display, or advertisement of eggs shall contain incorrect, fraudulent, or  
10860 misleading representations. No person shall advertise eggs for sale unless the unabbreviated grade and  
10861 size-weight class, quality, or other required terms are conspicuously designated in letters at least half as  
10862 high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger.
- 10863 § 3.2-5305. Certain producers exempt from law.
- 10864 Producers selling a total of 150 dozen eggs or less per week produced by their own hens, or eggs  
10865 purchased from other producers not to exceed 60 dozen per week are exempt from this law provided all  
10866 eggs are of edible quality and of the quality as represented.
- 10867 § 3.2-5306. Enforcement of chapter; how eggs marked and quality determined; requirements.
- 10868 A. This chapter shall be enforced by the Commissioner and all eggs sold or offered for sale except  
10869 those exempted in § 3.2-5305 shall be marked according to the grades, sizes, quality, ungraded or  
10870 cracked and other required terms adopted by the Commissioner with the approval of the Board and  
10871 shall conform to the standards established for the grade, size, ungraded or cracked as labeled. Official  
10872 determination of the quality of all eggs outlined in this chapter shall be by candling.
- 10873 B. Eggs moving into private or cooperative packing plants, which are first receivers, where they will  
10874 be candled and graded, need not be marked.
- 10875 § 3.2-5307. Seller invoice; requirements.
- 10876 Any person selling or delivering eggs to restaurants, hotels, retail stores, bakeries or other institution  
10877 purchasing eggs for serving to guests, patrons, employees or inmates shall furnish the purchaser with an  
10878 invoice showing the name and address of the seller and the quantity, grade, and size of such eggs. If the  
10879 eggs are ungraded, such fact shall appear on the invoice. A copy of such invoice shall be retained by  
10880 the seller and purchaser for not less than 30 days.
- 10881 § 3.2-5308. Sanitation and related matters.
- 10882 A. Any person assembling, transporting, processing, holding, or offering for sale eggs destined for a

10883 consumer or an institutional consumer shall provide and maintain a satisfactory relative humidity. In  
 10884 addition, any container, including the packaging material therein or associated therewith, shall be clean  
 10885 and free from foreign odor.

10886 B. The Board shall by regulations, provide for the keeping, processing, transporting, and the sale of  
 10887 eggs under sanitary conditions.

10888 C. Nothing in this chapter or in any regulations of the Board shall be construed to exempt any  
 10889 persons or premises from the application of any laws otherwise applicable and relating to the operation  
 10890 of establishments or facilities for the storing, transporting, sale, distribution, preparation, or serving of  
 10891 food.

10892 § 3.2-5309. Stop-sale order and seizure.

10893 A. If after inspection, the Department determines that any eggs are being offered, displayed, stored,  
 10894 processed, or transported in violation of this chapter, the Department may issue a stop-sale order as to  
 10895 such eggs directed to the owner or custodian thereof. Such order shall specify the reason for its  
 10896 issuance and shall detail the character of the violation. No eggs to which a stop-sale order applies shall  
 10897 be marketed until and unless the order has been withdrawn. The Department shall withdraw a stop-sale  
 10898 order only upon its determination that the conditions leading to the issuance of the order have been  
 10899 corrected.

10900 B. Whenever the public interest requires, the Department may take possession or custody of the eggs  
 10901 against which a stop-sale order has been issued and may commence proceedings for the seizure thereof.  
 10902 Upon seizure and proof of violation, the eggs shall be disposed of in such manner as may be consistent  
 10903 with the public safety and interest. The owner or custodian of the eggs shall not be entitled to any  
 10904 compensation or damages on account of such seizure or disposition.

10905 § 3.2-5310. Right of entry.

10906 The Commissioner may enter during normal business hours on or into any premises or any vehicle  
 10907 wherein eggs are bought, stored, sold, offered for sale, processed, or transported, or wherein the  
 10908 Commissioner has reason to believe that any such activity is carried on, in order to inspect and  
 10909 examine eggs, egg containers, any equipment, facilities or records pertinent to the conduct of activities  
 10910 subject to this chapter or regulations implementing the same, or to ascertain the state of compliance  
 10911 with any order issued by the Department pursuant to this chapter.

10912 § 3.2-5311. Adopting regulations.

10913 The Board may adopt regulations to administer this chapter.

10914 § 3.2-5312. Violation a misdemeanor.

10915 Any person that violates any provision of this chapter is guilty of a Class 1 misdemeanor.

10916 § 3.2-5313. Injunction.

10917 The Department acting by the Attorney General or local prosecutor may enforce any provision of  
 10918 this chapter or any regulation issued pursuant thereto by injunction.

10919 § 3.2-5314. Remedies not exclusive.

10920 The institution of proceedings for the application of any remedy, or the issuance of any order on  
 10921 account thereof, or the imposition of any fine or penalty pursuant to this chapter shall not operate as a  
 10922 bar or limitation to the application of any other remedy available pursuant to this chapter or any other  
 10923 applicable law.

10924 § 3.2-5315. Judicial review.

10925 Any determination of final actions of the Department taken pursuant to this chapter shall be  
 10926 reviewable in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

10927 CHAPTER 54.

10928 SLAUGHTERHOUSES, MEAT, AND DRESSED POULTRY.

10929 Article 1.

10930 General Provisions.

10931 § 3.2-5400. Definitions.

10932 As used in this chapter, unless the context requires a different meaning:

10933 "Animal food manufacturer" means any person engaged in the business of preparing animal  
 10934 (including poultry) food derived wholly or in part from livestock or poultry carcasses or parts or  
 10935 products of such carcasses.

10936 "Broker" means any person engaged in the business of buying or selling livestock products or  
 10937 poultry products on commission, or otherwise negotiating purchases or sales of such articles other than  
 10938 for his own account or as an employee of another person.

10939 "Capable of use as human food" shall apply to any livestock or poultry carcass, or part or product  
 10940 of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed  
 10941 by the Board to deter its use as human food, or it is naturally inedible by humans.

10942 "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or  
 10943 cover.

10944 "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat.

- 10945 1040), and acts amendatory thereof or supplementary thereto.
- 10946 "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as
- 10947 amended by the Wholesale Meat Act (81 Stat. 584); the term "Federal Poultry Products Inspection Act"
- 10948 means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesale
- 10949 Poultry Products Act (82 Stat. 791); and the term "federal acts" means these two federal laws.
- 10950 "Immediate container" means any consumer package; or any other container in which livestock
- 10951 products or poultry products, not consumer packaged, are packed.
- 10952 "Inspector" means an employee or official of the Commonwealth authorized by the Commissioner or
- 10953 any employee or official of the government of any locality authorized by the Commissioner to perform
- 10954 any inspection functions under this article under an agreement between the Commissioner and such
- 10955 governmental subdivision.
- 10956 "Label" means a display of written, printed, or graphic matter upon any article or the immediate
- 10957 container (not including package liners) of any article.
- 10958 "Labeling" means all labels and other written, printed, or graphic matter: (i) upon any article or any
- 10959 of its containers or wrappers; or (ii) accompanying such article.
- 10960 "Livestock" means any cattle, sheep, swine, goats, horses, mules, or other equines, whether live or
- 10961 dead.
- 10962 "Livestock product" means any carcass, part thereof, meat, or meat food product of any livestock.
- 10963 "Meat food product" means any product capable of use as human food that is made wholly or in
- 10964 part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats. Products that
- 10965 contain meat or other portions of such carcasses only in a relatively small proportion or historically
- 10966 have not been considered by consumers as products of the meat food industry, and that are exempted
- 10967 from definition as a meat food product by the Commissioner under such conditions as he may prescribe
- 10968 to assure that the meat or other portions of such carcass contained in such product are not adulterated
- 10969 and that such products are not represented as meat food products. This term as applied to food
- 10970 products of equines shall have a comparable meaning.
- 10971 "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an
- 10972 inspector or other person performing official functions under this article.
- 10973 "Official device" means any device prescribed or authorized by the Commissioner for use in applying
- 10974 any official mark.
- 10975 "Official establishment" means any establishment as determined by the Commissioner at which
- 10976 inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry
- 10977 products is maintained under the authority of this article.
- 10978 "Official inspection legend" means any symbol prescribed by regulations of the Board showing that
- 10979 an article was inspected and passed in accordance with this article.
- 10980 "Official mark" means the official inspection legend or any other symbol prescribed by regulations of
- 10981 the Board to identify the status of any article or livestock or poultry under this article.
- 10982 "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have
- 10983 the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.
- 10984 "Poultry" means any domesticated bird, whether live or dead.
- 10985 "Poultry product" means any poultry carcass or part thereof; or any product that is made wholly or
- 10986 in part from any poultry carcass or part thereof, excepting products that contain poultry ingredients
- 10987 only in a relatively small proportion or historically have not been considered by consumers as products
- 10988 of the poultry food industry, and that are exempted by the Commissioner from definition as a poultry
- 10989 product under such conditions as he may prescribe to assure that the poultry ingredients in such
- 10990 products are not adulterated and that such products are not represented as poultry products.
- 10991 "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise
- 10992 manufactured or processed.
- 10993 "Render" means any person engaged in the business of rendering livestock or poultry carcasses, or
- 10994 parts of products of such carcasses, except rendering conducted under inspection or exemption under
- 10995 this article.
- 10996 "Shipping container" means any container used or intended for use in packaging the product packed
- 10997 in an immediate container.
- 10998 § 3.2-5401. Adulterated livestock product or poultry product.
- 10999 Any livestock product or poultry product shall be deemed to be adulterated:
- 11000 1. If it bears or contains any poisonous or deleterious substance that may render it injurious to
- 11001 health; but in case the substance is not an added substance, such article shall not be considered
- 11002 adulterated under this clause if the quantity of such substance in or on such article does not ordinarily
- 11003 render it injurious to health;
- 11004 2. If it bears or contains (by reason of administration of any substance to the livestock or poultry or
- 11005 otherwise) any added poisonous or added deleterious substance (other than one that is: (i) a pesticide

- 11006 *chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) that may,*  
11007 *in the judgment of the Commissioner, make such article unfit for human food;*
- 11008 3. *If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains*  
11009 *a pesticide chemical that is unsafe within the meaning of § 408 of the Federal Food, Drug, and*  
11010 *Cosmetic Act;*
- 11011 4. *If it bears or contains any food additive that is unsafe within the meaning of § 409 of the Federal*  
11012 *Food, Drug, and Cosmetic Act;*
- 11013 5. *If it bears or contains any color additive that is unsafe within the meaning of § 706 of the Federal*  
11014 *Food, Drug, and Cosmetic Act; provided, that an article that is not otherwise deemed adulterated under*  
11015 *subsection C or D of this section shall nevertheless be deemed adulterated if use of the pesticide*  
11016 *chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board*  
11017 *in official establishments;*
- 11018 6. *If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other*  
11019 *reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;*
- 11020 7. *If it has been prepared, packed, or held under unsanitary conditions whereby it may have become*  
11021 *contaminated with filth, or whereby it may have been rendered injurious to health;*
- 11022 8. *If it is, in whole or in part, the product of an animal (including poultry) that has died otherwise*  
11023 *than by slaughter;*
- 11024 9. *If its container is composed, in whole or in part, of any poisonous or deleterious substance that*  
11025 *may render the contents injurious to health;*
- 11026 10. *If it has been intentionally subjected to radiation, unless the use of the radiation was in*  
11027 *conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and*  
11028 *Cosmetic Act;*
- 11029 11. *If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if*  
11030 *any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been*  
11031 *concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so*  
11032 *as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of*  
11033 *greater value than it is; or*
- 11034 12. *If it is margarine containing animal fat and any of the raw material used therein consisted in*  
11035 *whole or in part of any filthy, putrid, or decomposed substance.*
- 11036 § 3.2-5402. *Misbranded livestock product or poultry product.*
- 11037 *Any livestock product or poultry product shall be deemed to be misbranded:*
- 11038 1. *If its labeling is false or misleading in any particular;*
- 11039 2. *If it is offered for sale under the name of another food;*
- 11040 3. *If it is an imitation of another food, unless its label bears, in type of uniform size and prominence,*  
11041 *the word "imitation" and immediately thereafter, the name of the food imitated;*
- 11042 4. *If its container is so made, formed, or filled as to be misleading;*
- 11043 5. *Unless it bears a label showing: (i) the name and place of business of the manufacturer, packer,*  
11044 *or distributor; and (ii) an accurate statement of the quantity of the product in terms of weight, measure,*  
11045 *or numerical count; provided, that under this subsection, exemptions as to livestock products not in*  
11046 *containers may be established by regulations prescribed by the Board; and provided, further, that under*  
11047 *clause (ii) of this subsection, reasonable variations may be permitted, and exemptions as to small*  
11048 *packages may be established for livestock products or poultry products by regulations prescribed by the*  
11049 *Board;*
- 11050 6. *If any word, statement, or other information required by or under authority of this chapter to*  
11051 *appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as*  
11052 *compared with other words, statements, designs, or devices, in labeling) and in such terms as to render*  
11053 *it likely to be read and understood by the ordinary individual under customary conditions of purchase*  
11054 *and use;*
- 11055 7. *If it purports to be or is represented as a food for which a definition and standard of identity or*  
11056 *composition has been prescribed by the regulations of the Board under § 3.2-5404 unless: (i) it*  
11057 *conforms to such definition and standard; and (ii) its label bears the name of the food specified in the*  
11058 *definition and standard and, insofar as may be required by such regulations, the common names of*  
11059 *optional ingredients (other than spices, flavoring, and coloring) present in such food;*
- 11060 8. *If it purports to be or is represented as a food for which a standard or standards of fill of*  
11061 *container have been prescribed by regulations of the Board under § 3.2-5404 and it falls below the*  
11062 *standard of fill of container applicable thereto, unless its label bears, in such manner and form as such*  
11063 *regulations specify, a statement that it falls below such standard;*
- 11064 9. *If it is not subject to the provisions of subsection G, unless its label bears: (i) the common or*  
11065 *usual name of the food, if any there be; and (ii) in case it is fabricated from two or more ingredients,*  
11066 *the common or usual name of each such ingredient; except that spices, flavorings, and colorings may,*  
11067 *when authorized by the Commissioner, be designated as spices, flavorings, and colorings without*

11068 naming each; provided that, to the extent that compliance with the requirements of clause (ii) of this  
 11069 subsection is impracticable, or results in deception or unfair competition, exemptions shall be  
 11070 established by regulations promulgated by the Board;

11071 10. If it purports to be or is represented for special dietary uses, unless its label bears such  
 11072 information concerning its vitamin, mineral, and other dietary properties as the Commissioner, after  
 11073 consultation with the U.S. Department of Agriculture, determines to be, and prescribes as, necessary in  
 11074 order fully to inform purchasers as to its value for such uses;

11075 11. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless  
 11076 it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of  
 11077 this subsection is impracticable, exemptions shall be established by regulations adopted by the Board;  
 11078 or

11079 12. If it fails to bear, directly thereon and on its containers, as the Board may by regulations  
 11080 prescribe, the official inspection legend and establishment number of the establishment where the  
 11081 product was prepared and, unrestricted by any of the foregoing, such other information as the Board  
 11082 may require in such regulations to assure that it will not have false or misleading labeling and that the  
 11083 public will be informed of the manner of handling required to maintain the article in a wholesome  
 11084 condition.

11085 § 3.2-5403. Department to cooperate with U.S. Department of Agriculture.

11086 The Department shall cooperate with the U.S. Department of Agriculture in administration of this  
 11087 chapter to provide for meat and poultry products inspection programs. These programs will impose and  
 11088 enforce requirements with respect to intrastate operations and commerce that are at least equal to those  
 11089 imposed and enforced under the Federal Meat Inspection Act and the Federal Poultry Products  
 11090 Inspection Act with respect to operations and transactions in interstate commerce; and the  
 11091 Commissioner is directed to administer this chapter so as to accomplish this purpose.

11092 § 3.2-5404. Duties of the Board.

11093 In order to accomplish the objective stated in § 3.2-5403, the Board:

11094 1. Shall, by regulations, require antemortem and postmortem inspections, quarantine, segregation  
 11095 and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock  
 11096 products and poultry products at all establishments in the Commonwealth, except those exempted by the  
 11097 Commissioner pursuant to subdivision 9 of § 3.2-5405, at which livestock or poultry are slaughtered or  
 11098 livestock products or poultry products are prepared for human food solely for distribution in intrastate  
 11099 commerce;

11100 2. Shall, by regulations, require the identification of livestock and poultry for inspection purposes  
 11101 and the marking and labeling of livestock products or poultry products or their containers, or both, as  
 11102 "Virginia Inspected and Passed" if the products are found upon inspection to be not adulterated and as  
 11103 "Virginia Inspected and Condemned" if they are found upon inspection to be adulterated, and the  
 11104 destruction for food purposes of all such condemned products under the supervision of an inspector;

11105 3. Shall prohibit the entry into official establishments of livestock products and poultry products not  
 11106 prepared under federal inspection or inspection pursuant to this article and further limit the entry of  
 11107 such articles and other materials into such establishments under such conditions as it deems necessary  
 11108 to effectuate the purposes of this article;

11109 4. Shall, by regulations, require that when livestock products and poultry products leave official  
 11110 establishments they shall bear directly thereon or on their containers, or both, as it may require, all  
 11111 information required under § 3.2-5402; and require approval of all labeling and containers to be used  
 11112 for such products when sold or transported in intrastate commerce to assure that they comply with the  
 11113 requirements of this article;

11114 5. Shall require the investigation of the sanitary conditions of each establishment within subdivision  
 11115 1 of this section and require the Commissioner to withdraw or otherwise refuse to provide inspection  
 11116 service at any such establishment where the sanitary conditions are such as to render adulterated any  
 11117 livestock products or poultry products prepared or handled thereat;

11118 6. Shall prescribe regulations relating to sanitation for all establishments required to have inspection  
 11119 under subdivision 1 of this section;

11120 7. Shall, by regulations, require that the following classes of persons shall keep such records and for  
 11121 such periods as are specified in the regulations to fully and correctly disclose all transactions involved  
 11122 in their business, and afford to the Commissioner access to such places of business, an opportunity, at  
 11123 all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to  
 11124 take reasonable samples of the inventory upon payment of the fair market value therefor: any persons  
 11125 that engage in or for intrastate commerce: (i) in the business of slaughtering any livestock or poultry,  
 11126 or preparing, freezing, packaging or labeling, buying or selling (as brokers, wholesalers or otherwise),  
 11127 transporting, or storing any livestock products or poultry products for human or animal food; or (ii) in  
 11128 business as renderers or in the business of buying, selling or transporting any dead, dying, disabled or

11129 *diseased livestock or poultry, or parts of the carcasses of any such animals (including poultry) that died*  
 11130 *otherwise than by slaughter;*

11131 8. *Shall, by regulations, prescribe the size and style of type to be used for labeling information*  
 11132 *required under this article, and definitions and standards of identity or composition or standards of fill*  
 11133 *of container, consistent with federal standards, when it deems such action appropriate for the protection*  
 11134 *of the public;*

11135 9. *Shall, by regulations, prescribe conditions of storage and handling of livestock products and*  
 11136 *poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting*  
 11137 *such articles in or for intrastate commerce to assure that such articles will not be adulterated or*  
 11138 *misbranded when delivered to the consumer;*

11139 10. *Shall, by regulations, require that every person engaged in business in or for intrastate*  
 11140 *commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of*  
 11141 *livestock products or poultry products, or engaged in the business of buying, selling or transporting in*  
 11142 *intrastate commerce, any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses*  
 11143 *of any such animals (including poultry) that died otherwise than by slaughter shall register with the*  
 11144 *Commissioner his name and the address of each place of business at which and all trade names under*  
 11145 *which he conducts such business;*

11146 11. *May adopt by reference or otherwise such provisions of the rules and regulations under the*  
 11147 *federal acts (with such changes therein as it deems appropriate to make them applicable to operations*  
 11148 *and transactions subject to this article) that shall have the same force and effect as if promulgated*  
 11149 *under this article, and promulgate such other rules and regulations it deems necessary for the efficient*  
 11150 *execution of the provisions of this article; and*

11151 12. *Shall promulgate rules of practice providing opportunity for hearing in connection with issuance*  
 11152 *of orders under subdivision 5 of this section or subdivision A 1, A 2, or A 3 of § 3.2-5405 pending*  
 11153 *issuance of a final order in any such proceeding.*

11154 § 3.2-5405. *Powers of Commissioner.*

11155 A. *The Commissioner may:*

11156 1. *Order removal of inspectors from any establishment that fails to destroy condemned products as*  
 11157 *required under subdivision 2 of § 3.2-5404;*

11158 2. *Order cessation of inspection service under this chapter with respect to any establishment for*  
 11159 *causes specified in § 401 of the Federal Meat Inspection Act or § 18 of the Federal Poultry Products*  
 11160 *Inspection Act;*

11161 3. *Order labeling and containers to be withheld from use if he determines that the labeling is false*  
 11162 *or misleading or the containers are of a misleading size or form;*

11163 4. *Require that equines be slaughtered and prepared in establishments separate from establishments*  
 11164 *where other livestock are slaughtered or their products are prepared;*

11165 5. *Appoint and prescribe the duties of such inspectors and other personnel as he deems necessary for*  
 11166 *the efficient execution of the provisions of this chapter;*

11167 6. *Cooperate with the U.S. Department of Agriculture in administration of this chapter to effectuate*  
 11168 *the purposes stated in § 3.2-5403; accept federal assistance for that purpose and spend public funds of*  
 11169 *the Commonwealth appropriated for administration of this chapter to pay 50 percent of the estimated*  
 11170 *total cost of the cooperative program;*

11171 7. *Recommend to the U.S. Department of Agriculture for appointment to the advisory committees*  
 11172 *provided for in the federal acts, such officials or employees of the Department as the Commissioner*  
 11173 *shall designate;*

11174 8. *Serve as the representative of the Governor for consultation with said Secretary under paragraph*  
 11175 *(c) of § 301 of the Federal Meat Inspection Act and paragraph (c) of § 5 of the Federal Poultry*  
 11176 *Products Inspection Act unless the Governor selects another representative; and*

11177 9. *Exempt the operations of any person from inspection or other requirements of this article if and to*  
 11178 *the extent such operations would be exempt from the corresponding requirements under the Federal*  
 11179 *Meat Inspection Act or the Federal Poultry Products Inspection Act if they were conducted in or for*  
 11180 *interstate commerce or if the Commonwealth was designated under the federal acts as one in which the*  
 11181 *federal requirements apply to intrastate commerce.*

11182 B. *Any order issued under subdivisions 1, 2, or 3 of subsection A shall be final unless appealed in*  
 11183 *accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

11184 Article 2.

11185 Inspection, Slaughter, and Official Marks.

11186 § 3.2-5406. *Meat inspection regulations.*

11187 A. *The Commissioner may adopt: (i) by reference any regulation under the federal acts as it pertains*  
 11188 *to this chapter, amending it as necessary for intrastate applicability; and (ii) any regulation containing*  
 11189 *provisions no less stringent than those contained in federal regulation. Such regulation adopted by the*  
 11190 *Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the*

11191 regulation as a final regulation in the Virginia Register of Regulations.

11192 The regulation shall contain a preamble stating that the Board will receive, consider, and respond to  
11193 petitions by any interested person at any time with respect to reconsideration or revision of such  
11194 regulation.

11195 B. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise  
11196 the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with  
11197 the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia  
11198 Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor  
11199 public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or  
11200 revision of any regulation adopted pursuant to this section.

11201 § 3.2-5407. Prohibitions in general.

11202 A. No person shall, with respect to any livestock or poultry or any livestock products or poultry  
11203 products:

11204 1. Slaughter any such animals or prepare any such articles that are capable of use as human food,  
11205 at any establishment preparing such articles solely for intrastate commerce, except in compliance with  
11206 the requirements of this chapter;

11207 2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate  
11208 commerce, any such articles that: (i) are capable of use as human food, and (ii) are adulterated or  
11209 misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for  
11210 transportation; or any articles required to be inspected under this chapter unless they have been so  
11211 inspected and passed; or

11212 3. Perform any act, with respect to any articles that are capable of use as human food, while they  
11213 are being transported in intrastate commerce or held for sale after such transportation, that is intended  
11214 to cause or has the effect of causing such articles to be adulterated or misbranded.

11215 B. No person shall sell, transport, offer for sale or transportation, or receive for transportation, in  
11216 intrastate commerce, or from an official establishment, any slaughtered poultry from which the blood,  
11217 feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by  
11218 the Board.

11219 C. No person shall violate any provision of the regulations of the Board under subdivisions 7, 8, 9,  
11220 or 10 of § 3.2-5404 or orders of the Commissioner under subdivisions A 3 and A 4 of § 3.2-5405.

11221 § 3.2-5408. Prohibitions against unauthorized use of any official marks.

11222 A. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make  
11223 any device containing any official mark or simulation thereof, or any label bearing any such mark or  
11224 simulation, or any form of official certificate or simulation thereof, except as authorized by the  
11225 Commissioner.

11226 B. No person shall:

11227 1. Forge any official device, mark, or certificate;

11228 2. Without authorization from the Commissioner, use any official device, mark, or certificate, or  
11229 simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

11230 3. Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy  
11231 any official device, mark, or certificate;

11232 4. Knowingly possess, without promptly notifying the Commissioner any official device or any  
11233 counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any  
11234 carcass of any animal (including poultry), or part or product thereof, bearing any counterfeit, simulated,  
11235 forged, or improperly altered official mark;

11236 5. Knowingly make any false statement in any shipper's certificate or other nonofficial or official  
11237 certificate provided for in the regulations prescribed by the Board; or

11238 6. Knowingly represent that any article has been inspected and passed, or exempted, under this  
11239 article when, in fact, it has, respectively, not been so inspected and passed, or exempted.

11240 § 3.2-5409. Prohibitions against intrastate distribution of equine products.

11241 A. No person shall sell, transport, offer for sale or transportation, or receive for transportation, in  
11242 intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the  
11243 meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or  
11244 otherwise identified as required by regulations prescribed by the Board to show the kinds of animals  
11245 from which they were derived.

11246 B. No person shall buy, sell, transport, or offer for sale or transportation, or receive for  
11247 transportation, in intrastate commerce, any livestock products or poultry products that are not intended  
11248 for use as human food unless they are denatured or otherwise identified as required by the regulations  
11249 of the Board or are naturally inedible by humans.

11250 C. No person engaged in the business of buying, selling, or transporting in intrastate commerce,  
11251 dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died

11252 otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for  
 11253 transportation, in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the  
 11254 products of any such animals that died otherwise than by slaughter, unless such transaction or  
 11255 transportation, is made in accordance with such regulations as the Board may prescribe to assure that  
 11256 such animals, or the unwholesome parts or products thereof, will be prevented from being used for  
 11257 human food purposes.

11258 Article 3.

11259 Enforcement and Penalties.

11260 § 3.2-5410. Prohibitions of bribery or gifts to state employees; assaults or interference with such  
 11261 employees.

11262 A. Any person that shall give, pay, or offer, directly or indirectly, to any officer or employee of the  
 11263 Commonwealth authorized to perform any of the duties prescribed by this chapter or by the regulations  
 11264 of the Board, any money or other thing of value, with intent to influence said officer or employee in the  
 11265 discharge of any such duty, is guilty of a Class 6 felony. Any officer or employee of the Commonwealth  
 11266 authorized to perform any of the duties prescribed by this article who shall accept any money, gift, or  
 11267 other thing of value from any person, given with intent to influence his official action, or who shall  
 11268 receive or accept from any person engaged in intrastate commerce any gift, money, or other thing of  
 11269 value given with any purpose or intent whatsoever, is guilty of a Class 6 felony and shall, upon  
 11270 conviction, be summarily discharged from office.

11271 B. Any person that forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any  
 11272 person engaged in or on account of the performance of his official duties under this chapter with the  
 11273 intent to hinder, delay, or prevent the performance of such duties is guilty of a Class 6 felony.

11274 § 3.2-5411. Limitation of inspection to plants preparing products for human food.

11275 Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock  
 11276 or poultry or the preparation of any livestock products or poultry products that are not intended for use  
 11277 as human food, but such articles shall, prior to their offer for sale or transportation in intrastate  
 11278 commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by  
 11279 regulations of the Board to deter their use for human food.

11280 § 3.2-5412. Inspection of products placed in container; right of access to plants at any time.

11281 A. No inspection of products placed in any container at any official establishment shall be deemed to  
 11282 be complete until the products are sealed or enclosed therein under the supervision of an inspector.

11283 B. For purpose of any inspection of products required by this chapter, inspectors authorized by the  
 11284 Commissioner shall have access at all times, by day or night, to every part of every establishment  
 11285 required to have inspection under this chapter, whether the establishment is operated or not.

11286 § 3.2-5413. Administrative detention of violative animals and products.

11287 Whenever any livestock product or poultry product exempted from the definition of a livestock  
 11288 product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock  
 11289 or poultry, is found by the Commissioner upon any premises where it is held for purposes of, or during  
 11290 or after distribution in, intrastate commerce or is otherwise subject to this chapter, and there is reason  
 11291 to believe that any such article is adulterated or misbranded and is capable of use as human food, or  
 11292 that it has not been inspected, in violation of the provisions of this chapter or of the Federal Meat  
 11293 Inspection Act or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic  
 11294 Act, or that such article or animal has been or is intended to be distributed in violation of any such  
 11295 provisions, it may be detained for a period not to exceed 20 days, pending action under § 3.2-5414 or  
 11296 notification of any federal authorities having jurisdiction over such article or animal, and shall not be  
 11297 moved by any person from the place where it is located when so detained, until released. All official  
 11298 marks may be required to be removed from such article or animal before it is released unless it appears  
 11299 to the satisfaction of the Commissioner that the article or animal is eligible to retain such marks.

11300 § 3.2-5414. Seizure and condemnation provisions.

11301 A. Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or  
 11302 poultry that is being transported in intrastate commerce, or is otherwise subject to this chapter, or is  
 11303 held for sale in the Commonwealth after such transportation, and that: (i) is or has been prepared, sold,  
 11304 transported, or otherwise distributed or offered or received for distribution in violation of this chapter;  
 11305 (ii) is capable of use as human food and is adulterated or misbranded; or (iii) in any other way is in  
 11306 violation of this chapter, shall be liable to be proceeded against and seized and condemned.

11307 At any time prior to the expiration of the 20-day detention period provided by § 3.2-5413, the  
 11308 Commissioner shall notify the attorney for the Commonwealth for the city or county where such  
 11309 detention was made in writing of said detention. Upon receiving such written notification, the attorney  
 11310 for the Commonwealth shall forthwith file in the name of the Commonwealth an information against the  
 11311 detained property in the clerk's office of the circuit court of the county or city where detention was  
 11312 made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing  
 11313 the sheriff to seize the detained property and see to its transportation to a suitable place of storage that,



11314 if necessary, may be outside of the county or city served by the sheriff. Should the attorney for the  
 11315 Commonwealth, for any reason, fail to file such information within five days after receipt of written  
 11316 notice of detention of articles or animals, the same may, at any time within 30 days thereafter be filed  
 11317 by the Attorney General and the proceedings thereon shall be the same as if filed by the attorney for the  
 11318 Commonwealth.

11319 Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of  
 11320 the seized property, and shall petition that the same be condemned and sold and the proceeds disposed  
 11321 of according to law, and that all persons concerned or interested be cited to appear and show cause  
 11322 why such property should not be condemned and sold to enforce the forfeiture. After the filing of the  
 11323 information, the attorney for the Commonwealth shall apply to the judge of the court wherein the  
 11324 information was filed for a hearing on the matters contained in the information. The judge of the court  
 11325 shall move the matter to the head of the docket and such hearing shall be had as soon as practical to  
 11326 do so.

11327 The owner of and all persons in any manner then indebted or liable for the purchase price of the  
 11328 article or animal, and any person having a lien thereon, if they be known to the attorney who files the  
 11329 information, shall be made parties defendant thereto, and shall be served with the notice hereinafter  
 11330 provided for, in the manner provided by law for serving a notice, at least ten days before the day  
 11331 therein specified for the hearing on the information, if they be residents of the Commonwealth; and if  
 11332 they be unknown or nonresidents, or cannot with reasonable diligence be found in the Commonwealth,  
 11333 they shall be deemed sufficiently served by publication of the notice once a week for two successive  
 11334 weeks in some newspaper published in such county or city, or if none be published therein, then in some  
 11335 newspaper having general circulation therein, and a notice shall be sent by registered mail of such  
 11336 seizure to the last known address of the owner of such article or animal. If any such person be served  
 11337 by publication, then no hearing shall be had prior to the expiration of 10 days from the date of the  
 11338 record publication of the notice.

11339 Any person claiming to be the owner of such seized article or animal, or to hold a lien thereon, may  
 11340 appear at any time before final judgment of the trial court, and be made a party defendant to the  
 11341 information so filed, which appearance shall be in person or by answer, under oath, in which shall be  
 11342 clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner,  
 11343 the right or title by which he claims to be such owner, and if lienor, the amount and character of his  
 11344 lien, and the evidence thereof; and in either case, such defendant shall set forth fully any reason or  
 11345 cause that he may have to show against the forfeiture of the article or animal.

11346 If such article or animal is condemned, it shall, after entry of the decree, be disposed of by  
 11347 destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and  
 11348 storage and other proper expenses, shall be paid into the treasury of the Commonwealth, but the article  
 11349 or animal shall not be sold contrary to the provisions of this chapter, or the Federal Meat Inspection  
 11350 Act or the Federal Poultry Products Inspection Act, or the Federal Food, Drug, and Cosmetic Act;  
 11351 provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article  
 11352 or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter, or the  
 11353 laws of the United States, the court may direct that such article or animal be delivered to a claimant  
 11354 thereof, who may have appeared in the proceedings, subject to such supervision by the Commissioner as  
 11355 is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered  
 11356 against the article or animal and it is released under bond, or destroyed, court costs and fees, and  
 11357 storage and other proper expenses may as the court deems just, be awarded against the person, if any,  
 11358 intervening as claimant of the article or animal.

11359 If a claimant shall deny for any reason that the article or animal to be condemned is subject to  
 11360 condemnation as provided by this section, and shall demand a trial by jury of the issue thus made, the  
 11361 court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled  
 11362 as prescribed by law, and if such jury shall find on the issue in favor of such claimant, or if the court,  
 11363 trying such issue without a jury, shall so find, the judgment of the court shall be to entirely relieve the  
 11364 property from forfeiture, and no costs shall be taxed against such claimant.

11365 B. The provisions of this section shall in no way derogate from authority for condemnation or  
 11366 seizure conferred by other provisions of this chapter, or other laws.

11367 § 3.2-5415. General criminal penalties; warning letter.

11368 A. Any person that violates any provisions of this chapter for which no other criminal penalty is  
 11369 provided is guilty of a Class 1 misdemeanor. If such violation involves intent to defraud, or any  
 11370 distribution or attempted distribution of an article that is adulterated (except as defined in subsection K  
 11371 of § 3.2-5401) knowing the article to be adulterated, such person is guilty of a Class 6 felony.

11372 B. Nothing in this chapter shall be construed as requiring the Commissioner to report for  
 11373 prosecution or for the institution of condemnation or injunction proceedings, minor violations of this  
 11374 chapter whenever he believes that the public interest will be adequately served by a suitable written

11375 notice of warning.

11376 § 3.2-5416. Authority of Commissioner.

11377 The Commissioner shall have power:

11378 1. To gather and compile information concerning and, to investigate the organization, business,  
11379 conduct, practices, and management of any person engaged in intrastate commerce, and the relation  
11380 thereof to other persons; and

11381 2. To require, by general or special orders, persons engaged in intrastate commerce, or any class of  
11382 them, or any of them, to file with the Commissioner in such form as the Commissioner may prescribe,  
11383 annual or special, or both annual and special, reports or answers in writing to specific questions  
11384 furnishing the Commissioner such information as he may require as to the organization, business,  
11385 conduct, practices, management, and relation to other persons, of the person filing such reports or  
11386 answers in writing. Such reports and answers shall be made under oath, or otherwise, as the  
11387 Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as  
11388 the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner.

11389 a. For the purpose of this chapter the Commissioner shall at all reasonable times have access to, for  
11390 the purpose of examination, and the right to copy any documentary evidence of any person being  
11391 investigated or proceeded against, and may require by subpoena the attendance and testimony of  
11392 witnesses and the production of all documentary evidence of any person relating to any matter under  
11393 investigation. The Commissioner may sign subpoenas and may administer oaths and affirmations,  
11394 examine witnesses, and receive evidence.

11395 b. Such attendance of witnesses, and the production of such documentary evidence, may be required  
11396 at any designated place of hearing. In case of disobedience to a subpoena, the Commissioner may  
11397 invoke the aid of an appropriate circuit court to require the attendance and testimony of witnesses and  
11398 the production of documentary evidence.

11399 c. Any circuit court within the jurisdiction where such inquiry is carried on may, in case of  
11400 contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to  
11401 appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence  
11402 touching the matter in question; and any failure to obey such order of the court may be punished by  
11403 such court as a contempt thereof.

11404 d. The Commissioner may order testimony to be taken by deposition in any proceeding or  
11405 investigation pending under this chapter at any stage of such proceeding or investigation. Such  
11406 depositions may be taken before any person designated by the Commissioner and having the power to  
11407 administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or  
11408 under his direction and shall then be subscribed by the deponent. Any person may be compelled to  
11409 appear and depose and to produce documentary evidence before the Commissioner as hereinbefore  
11410 provided.

11411 e. Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are  
11412 paid witnesses in the courts of the Commonwealth, and witnesses whose depositions are taken and the  
11413 persons taking the same shall severally be entitled to the same fees as are paid for the like services in  
11414 such courts.

11415 f. No person shall be excused from attending and testifying or from producing books, papers,  
11416 schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner or  
11417 in obedience to the subpoena of the Commissioner, whether such subpoena be signed or issued by him  
11418 or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of  
11419 any alleged violation of this chapter, or of any amendments thereto, on the ground or for the reason  
11420 that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate  
11421 him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or  
11422 subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning  
11423 which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce  
11424 evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from  
11425 prosecution and punishment for perjury committed in so testifying.

11426 g. Any person that shall refuse to attend and testify or to answer any lawful inquiry, or to produce  
11427 documentary evidence, if in his or its power to do so, in obedience to the subpoena of the Commissioner  
11428 is guilty of a Class 1 misdemeanor.

11429 h. Any person that shall willfully make, or cause to be made, any false entry or statement of fact in  
11430 any report required to be made under this chapter, or that shall willfully make, or cause to be made,  
11431 any false entry in any account, record, or memorandum kept by any person subject to this chapter or  
11432 that shall willfully neglect or fail to make or to cause to be made, full, true, and correct entries in such  
11433 accounts, records, or memoranda, of all facts and transactions appertaining to the business of such  
11434 person or that shall willfully remove out of the jurisdiction of the Commonwealth, or willfully mutilate,  
11435 alter or by any other means falsify any documentary evidence of any person subject to this chapter or  
11436 that shall willfully refuse to submit to the Commissioner, for the purpose of inspection and taking

11437 copies, any documentary evidence of any person subject to this chapter in his possession or within his  
11438 control, is guilty of a Class 6 felony.

11439 i. If any person required by this chapter to file any annual or special report shall fail so to do  
11440 within the time fixed by the Commissioner for filing the same, and such failure shall continue for 30  
11441 days after notice of such default, such person shall forfeit to the Commonwealth the sum of \$100 for  
11442 each and every day of the continuance of such failure, which forfeiture shall be payable into the  
11443 treasury of the Commonwealth, and shall be recoverable in a civil suit in the name of the  
11444 Commonwealth brought in the city or county where the person has his principal office or in any city or  
11445 county where he shall do business. It shall be the duty of the Attorney General to prosecute for the  
11446 recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the  
11447 appropriation for the expenses of the Department.

11448 j. Any officer or employee of the Commonwealth who shall make public any information obtained by  
11449 the Commissioner, without his authority, unless directed by a court, is guilty of a Class 1 misdemeanor.

11450 § 3.2-5417. Power of injunction.

11451 The Commissioner is authorized to apply to any appropriate court for an injunction and such court  
11452 may grant a temporary or permanent injunction restraining a person from violating or continuing the  
11453 violation of any provision of this chapter, when the court determines that the testimony and evidence  
11454 presented warrants such action, without reference to adequacy of any remedy existing at law.

11455 § 3.2-5418. Limitation on applicability of chapter to matters regulated under federal acts.

11456 The requirements of this chapter shall apply to persons, establishments, animals, and articles  
11457 regulated under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act only to  
11458 the extent provided for in said federal acts.

#### 11459 Article 4.

#### 11460 Smithfield Hams.

11461 § 3.2-5419. Smithfield hams defined.

11462 Genuine Smithfield hams are hereby defined to be hams processed, treated, smoked, aged, cured by  
11463 the long-cure, dry salt method of cure and aged for a minimum period of six months; such six-month  
11464 period to commence when the green pork cut is first introduced to dry salt, all such salting, processing,  
11465 treating, smoking, curing, and aging to be done within the corporate limits of the town of Smithfield,  
11466 Virginia.

11467 § 3.2-5420. Only genuine Smithfield hams to be labeled or advertised as such.

11468 No person shall knowingly, label, stamp, pack, advertise, sell, or offer for sale any ham, either  
11469 wrapped or unwrapped, in a container or loose, as a genuine Smithfield ham unless such ham be a  
11470 genuine Smithfield ham as defined in § 3.2-5419.

11471 § 3.2-5421. Penalty for violation.

11472 Any person violating any of the provisions of this article is guilty of a Class 4 misdemeanor.

#### 11473 CHAPTER 55.

#### 11474 VINEGAR.

11475 § 3.2-5500. Definitions.

11476 As used in this chapter, unless the context requires a different meaning:

11477 "Apple vinegar," "cider vinegar," and similar words mean the product made exclusively from the  
11478 expressed juice of washed, fresh, whole apples or portions thereof by alcoholic and subsequent acetous  
11479 fermentations.

11480 "Corn sugar vinegar," "glucose vinegar," and similar words mean the product made by the alcoholic  
11481 and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose  
11482 prepared from cornstarch.

11483 "Distilled vinegar," "grain vinegar," or "spirit vinegar," or similar words mean the product made by  
11484 the acetous fermentation of dilute distilled alcohol derived from grain, sugar, syrup, molasses, or  
11485 refiners' syrup.

11486 "Evaporated apple products vinegar," "vinegar made from evaporated apple products," and similar  
11487 words mean the product made by the alcoholic and subsequent acetous fermentations of the aqueous  
11488 extract obtained from clean, sound dried apples, dried chopped apples, or dried apple skins or cores.

11489 "Grape vinegar," "wine vinegar," and similar words mean the product made by the alcoholic and  
11490 subsequent acetous fermentations of the expressed juice of fresh whole grapes or portions thereof.

11491 "Malt vinegar" and similar words mean the product made by the alcoholic and subsequent acetous  
11492 fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been  
11493 converted by malt.

11494 "Sugar vinegar" and similar words mean the product made by the alcoholic and subsequent acetous  
11495 fermentations, without distillation, of solutions of sugar, syrup, molasses, or refiners' syrup.

11496 § 3.2-5501. Contents; compliance with definitions.

11497 All vinegar made by fermentation without distillation must carry in solution only the extractive

11498 *matter derived exclusively from the fruit, grain, sugar or syrup from which it was derived and*  
 11499 *fermented, and comply with the definitions given in § 3.2-5500.*

11500 *§ 3.2-5502. When deemed adulterated; exception.*

11501 *Vinegar that fails to comply with the definitions contained in § 3.2-5500 or that contains any*  
 11502 *substance or ingredient not derived exclusively from the fruit, grain, sugar, or syrup from which it is*  
 11503 *made, or that is composed of a compound or mixture of vinegars made from fruit, grain, sugar and*  
 11504 *syrup, or any two or more of the same, unless its label bears a principal title differing from any of the*  
 11505 *named substance and clearly identifies the ingredients in the order of their predominance in the mixture,*  
 11506 *or that contains less than four grams of acetic acid in 100 cubic centimeters of the vinegar at 20*  
 11507 *degrees centigrade, shall be deemed adulterated.*

11508 *§ 3.2-5503. Pyroligneous or acetic acid not to be sold as vinegar.*

11509 *The product made by the destructive distillation of wood known as pyroligneous acid, or acetic acid*  
 11510 *derived from other sources than fruit, grain, sugar or syrup, or a product in which any such acid shall*  
 11511 *be used, mixed or compounded, shall not be sold, offered or had in possession for sale as vinegar.*

11512 *§ 3.2-5504. Marking packages containing vinegar reduced with water; sale of certain reduced*  
 11513 *vinegar prohibited.*

11514 *Packages containing vinegar that has been reduced with water must be plainly marked to indicate*  
 11515 *the acidity to which it has been reduced and the sale of any vinegar containing less than four percent*  
 11516 *acid strength is prohibited.*

11517 *§ 3.2-5505. Marking casks, barrels or other containers.*

11518 *Each cask, barrel, or other container of vinegar shall be plainly marked with the name and place of*  
 11519 *business of the manufacturer or distributor thereof, and the kind of vinegar contained therein, in the*  
 11520 *definitions contained in § 3.2-5500; and no person shall falsely mark any package containing any*  
 11521 *vinegar so defined, with any other brand or designation or with any additional words, marks, or*  
 11522 *descriptions that are false or deceptive in any particular whatever.*

11523 *§ 3.2-5506. Sales of certain vinegar prohibited.*

11524 *No person shall sell, offer to sell, or have in possession for sale in the Commonwealth:*

11525 *1. Any vinegar defined in § 3.2-5500 that does not comply with such definitions.*

11526 *2. Any adulterated or misbranded vinegar.*

11527 *3. Any vinegar or product in imitation of any vinegar so defined.*

11528 *4. Any vinegar to which any artificial coloring matter has been added of any kind whatever, or that*  
 11529 *contains any substance or ingredient not derived exclusively from the fruit, grain, sugar or syrup from*  
 11530 *which it purports to have been derived.*

11531 *§ 3.2-5507. Penalty.*

11532 *Violation of this chapter is a Class 3 misdemeanor.*

11533 *CHAPTER 56.*

11534 *WEIGHTS AND MEASURES.*

11535 *§ 3.2-5600. Definitions generally.*

11536 *As used in this chapter, unless the context requires a different meaning:*

11537 *"Commodity in package form" means any commodity packaged in any manner in advance of sale in*  
 11538 *units suitable for either wholesale or retail sale, exclusive of an auxiliary shipping container enclosing*  
 11539 *packages that individually conform to the requirements of this chapter. An individual item or lot of any*  
 11540 *commodity not in package form as defined in this section, but on which there is marked a selling price*  
 11541 *based on an established price per unit of weight or of measure, shall be construed to be commodity in*  
 11542 *package form.*

11543 *"Cord" means the amount of wood that is contained in a space of 128 cubic feet when the wood is*  
 11544 *ranked and well stowed.*

11545 *"Dockage" means the weight of impurities deducted by agreement between the seller and the buyer.*

11546 *"Fractional parts of units of weight or measure" means like fractional parts of the value of such unit*  
 11547 *as prescribed or defined in this chapter, and all contracts concerning the sale of commodities and*  
 11548 *services shall be construed in accordance with this definition.*

11549 *"Gross weight" means the total weight of the commodity, including any wrapper, and any other*  
 11550 *material or thing weighed or packed with such commodity, and including the vehicle or vessel*  
 11551 *containing the commodity.*

11552 *"Inspector" means a state inspector who is employed and authorized to test, certify, and seal weights*  
 11553 *and measures.*

11554 *"Livestock auction market" means any place of business or establishment where, during the regular*  
 11555 *course of business, cattle, sheep, swine, or other livestock are offered or exposed for sale, or sold, by*  
 11556 *weight, or by head, at auction, for compensation or profit.*

11557 *"Net weight" means the net weight of a commodity, that is, the weight of the commodity exclusive of*  
 11558 *any wrapper, and any other material or thing weighed or packed with such commodity, and excluding*  
 11559 *the vehicle or vessel containing the commodity. Net weight is the difference between the gross weight*

11560 and the tare weight.

11561 "Point-of-sale system" means an electronic cash register capable of recovering stored information  
11562 related to the sale price of individual retail items.

11563 "Sealer" means an inspector of weights and measures of a city, a county, or a joint city-county  
11564 jurisdiction.

11565 "Sell" or "sale" includes barter and exchange.

11566 "Tare weight" means the weight of any wrapper, and any other vehicle, vessel, material or thing that  
11567 is weighed with, but not an actual part of, a commodity sold by weight; thus, tare weight may include,  
11568 in the case of a packaged commodity, a wrapper, container, packaging material, binding material,  
11569 preservative, or the like, or in the case of bulk commodity, a vehicle, box, can, jar, or the like.

11570 "Ton" means a unit of 2,000 pounds avoirdupois weight.

11571 "Weighmaster" means the person responsible for weighing livestock that will be offered for sale,  
11572 based on his weight determination.

11573 "Weight" means the net weight when used in connection with this chapter. Whenever any commodity  
11574 is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts  
11575 concerning commodities shall be so construed.

11576 "Weights and measures" means all weights and measures of every kind, including instruments and  
11577 devices for weighing and measuring, and any appliances and accessories associated with any or all  
11578 such instruments and devices.

11579 § 3.2-5601. Powers and duties of Commissioner.

11580 The Commissioner shall have the custody of the state standards of weight and measure and of the  
11581 other standards and equipment provided for by this chapter, and shall keep accurate records of the  
11582 same. The Commissioner shall enforce the provisions of this chapter, and shall have and keep a general  
11583 supervision over the weights and measures offered for sale, sold, or in use in the Commonwealth.

11584 § 3.2-5602. Commissioner to test accuracy of point-of-sale systems.

11585 The Commissioner shall inspect and test point-of-sale systems, as he deems necessary, to determine:  
11586 (i) the accuracy and correct operation of the equipment; and (ii) if such system utilizes coding means in  
11587 lieu of manual entry, the accuracy of the data base.

11588 § 3.2-5603. Two systems of weights and measures recognized; definitions and tables of National  
11589 Institute of Standards and Technology to govern.

11590 Both the system of weights and measures in customary use in the United States and the metric  
11591 system of weights and measures are recognized, and one or the other, or both, of these systems shall be  
11592 used for all commercial purposes in the Commonwealth. The definitions of basic units of weight and  
11593 measure, the tables of weight and measure, and weights and measures equivalents, as published by the  
11594 National Institute of Standards and Technology, are recognized and shall govern weighing and  
11595 measuring equipment and transactions in the Commonwealth.

11596 § 3.2-5604. State standards of weight and measure.

11597 Such weights and measures in conformity with the standards of the United States as have been  
11598 supplied to the Commonwealth by the federal government or otherwise obtained by the Commonwealth  
11599 for use as state standards shall, when the same have been certified as being satisfactory for use as such  
11600 by the National Institute of Standards and Technology, be the state standards of weight and measure.  
11601 The state standards shall be kept in a safe and suitable place in the office or laboratory designated by  
11602 the Commissioner, they shall not be removed from the said office or laboratory except for repairs or for  
11603 certification, and they shall be maintained in such calibration as prescribed by the National Institute of  
11604 Standards and Technology. The state standards shall be used only in verifying the office standards and  
11605 for scientific purposes.

11606 § 3.2-5605. Office standards and field standards.

11607 In addition to the state standards provided for in § 3.2-5604, there shall be supplied by the  
11608 Commonwealth at least one complete set of copies of the state standards to be kept in the office or  
11609 laboratory designated by the Commissioner and to be known as "office standards," and in addition such  
11610 "field standards" and such equipment as may be found necessary to carry out the provisions of this  
11611 chapter. The office standards and field standards shall be verified upon their initial receipt and at least  
11612 once each year thereafter. The office standards shall be verified by direct comparison with the state  
11613 standards. After verification of the office standards the field standards shall be verified by comparison  
11614 with the office standards.

11615 § 3.2-5606. Advice and recommendations of National Institute of Standards and Technology;  
11616 publications of Institute.

11617 The Commissioner may be guided in the performance of his duties by the advice and  
11618 recommendations of the National Institute of Standards and Technology. In addition to the provisions of  
11619 § 3.2-5611 (relating to the Institute's publication Handbook 133), § 3.2-5620 (relating to the Institute's  
11620 publication, Handbook 44), and § 3.2-5622 (relating to the Institute's publication, Handbook 130), the

11621 *Board may give official status to any manual of inspection or other publication of that Institute.*

11622 *§ 3.2-5607. The Board may adopt regulations.*

11623 *A. The Board may adopt regulations for the enforcement of this chapter. These regulations may*  
11624 *include: (i) methods of sale of commodities; (ii) standards of net weight, measure, or count, and*  
11625 *standards of fill, for any commodity in package form; (iii) standards concerning the sale and exchange*  
11626 *of grains and other agriculture products; (iv) rules governing the technical and reporting procedures to*  
11627 *be followed; and (v) the report and record forms and marks of approval and rejection to be used by*  
11628 *inspectors and by sealers of weights and measures in the discharge of their official duties. The*  
11629 *governing body of any city or county employing a sealer may provide for the technical and reporting*  
11630 *procedures to be followed, and the report and record forms and marks of approval and rejection to be*  
11631 *used by such sealer within such city or county, unless the Board, after a hearing and with notice to the*  
11632 *governing body of the city or county involved, finds that such procedures and forms are inadequate to*  
11633 *carry out the purposes of this chapter.*

11634 *B. Regulations may also include: (i) exemptions from the sealing or marking requirements of*  
11635 *§ 3.2-5613 for weights and measures of such character or size that such sealing or marking would be*  
11636 *inappropriate, impracticable, or damaging to the apparatus in question; and (ii) exemptions from the*  
11637 *requirements of § 3.2-5609 for classes of weights and measures found to be of such character that*  
11638 *annual retesting is unnecessary to continued accuracy, provided that such exemptions specify, in a*  
11639 *schedule, the frequency of required retests for classes of devices so exempted.*

11640 *C. Specifications, tolerances, and regulations for weights and measures of the character of those*  
11641 *specified in § 3.2-5609, designed to eliminate from use, without prejudice to apparatus that conforms as*  
11642 *closely as practicable to the official standards, those that: (i) are inaccurate; (ii) are, or are likely to*  
11643 *be, faulty because their construction is such that their adjustments are insufficiently permanent or their*  
11644 *indications will not repeat correctly; or (iii) facilitate the perpetration of fraud.*

11645 *§ 3.2-5608. Testing and inspection of standards procured by cities and counties.*

11646 *The Commissioner shall annually test the standards of weights and measures procured by any city or*  
11647 *county for which the appointment of a sealer of weights and measures is provided by this chapter, and*  
11648 *shall approve the same when found to be correct.*

11649 *§ 3.2-5609. Testing and inspection of weights and measures offered for sale or commercially used.*

11650 *A. When not otherwise provided by law, the Commissioner shall have the power to inspect and test,*  
11651 *to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be*  
11652 *the duty of the Commissioner to inspect and test on a periodic basis as he deems necessary, to ascertain*  
11653 *if they are correct, all weights and measures commercially used: (i) in determining the weight,*  
11654 *measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of*  
11655 *weight, measure, or of count; or (ii) in computing the basic charge or payment for services rendered on*  
11656 *the basis of weight, measure, or count. With respect to any single-service devices and any uniformly*  
11657 *mass-produced devices, a test may be made on representative samples of such devices; and any lot of*  
11658 *which such samples are representative shall be held to be correct or incorrect upon the basis of the*  
11659 *results of the inspections and tests on such samples. As used in this chapter, "single-service devices"*  
11660 *means any devices designed to be used commercially once and then discarded. "Uniformly*  
11661 *mass-produced devices" includes any devices made by means of a mold or die, and not susceptible to*  
11662 *individual adjustment.*

11663 *B. The Commissioner shall submit a report by October 1 of each year to the Chairmen of the Senate*  
11664 *Committee on Finance and the Senate Committee on Agriculture, Conservation and Natural Resources,*  
11665 *and the Chairmen of the House Appropriations Committee and House Committee on Agriculture,*  
11666 *Chesapeake and Natural Resources on the testing and inspection activities of the Department weights*  
11667 *and measures program including the number and frequency of inspections for the weights and measures*  
11668 *devices.*

11669 *§ 3.2-5610. Investigations by Commissioner.*

11670 *The Commissioner shall investigate complaints made to him concerning violations of the provisions*  
11671 *of this chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate*  
11672 *and advisable to develop information on prevailing procedures in commercial quantity determinations*  
11673 *and on possible violations of the provisions of this chapter and to promote the general objective of*  
11674 *accuracy in the determination and representation of quantity in commercial transactions.*

11675 *§ 3.2-5611. Commissioner to weigh or measure packages and commodities; packages and*  
11676 *commodities ordered off sale.*

11677 *The Commissioner shall, on a periodic basis as he deems necessary, weigh or measure and inspect*  
11678 *packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of*  
11679 *delivery, to determine whether the same contain the amounts represented and whether they be kept,*  
11680 *offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of*  
11681 *commodities are found not to contain the amounts represented, or are found to be kept, offered, or*  
11682 *exposed for sale in violation of law, the Commissioner may order them off sale and may so mark or tag*

11683 them as to show them to be illegal. In carrying out the provisions of this section, the Commissioner may  
 11684 employ sampling and testing procedures as adopted by the National Conference on Weights and  
 11685 Measures, and published in National Institute of Standards and Technology Handbook 133, "Checking  
 11686 the Net Contents of Packaged Goods," and supplements thereto, or in any publication revising,  
 11687 supplementing, or superseding Handbook 133, for the inspection of packaged commodities in the  
 11688 Commonwealth, except insofar as modified or rejected by regulation. The procedures will determine  
 11689 compliance of a given lot of packages on the basis of the result obtained on a composite sample  
 11690 selected from, and representative of, such lot. No person shall: (i) sell, keep, offer, or expose for sale,  
 11691 any package or amount of commodity that has been ordered off sale or marked or tagged as provided  
 11692 in this section unless and until such package or amount of commodity has been brought into full  
 11693 compliance with all requirements of this chapter; or (ii) dispose of any package or amount of  
 11694 commodity that has been ordered off sale or marked or tagged as provided in this section, and that has  
 11695 not been brought into compliance with the requirements of this chapter, in any manner except with the  
 11696 specific approval of the Commissioner.

11697 § 3.2-5612. Stop-sale, stop-use and stop-removal orders; seizure and impounding of commodities,  
 11698 weights or measures; violation a misdemeanor; judicial review.

11699 Whenever it appears to the Commissioner that there is a violation of any of the provisions of this  
 11700 chapter, he may, in his discretion, issue and enforce a written or printed stop-sale, stop-use, or  
 11701 stop-removal order against any owner or custodian of any commodity, weight, or measure that is being  
 11702 used, sold, offered, or exposed for sale, or involved in any manner in connection with such violation,  
 11703 and he may further, in his discretion, seize and impound any such commodity, weight, or measure until  
 11704 the Commissioner is satisfied that such violation has ceased and that the owner or custodian thereof is  
 11705 in all respects complying with the provisions of this chapter.

11706 Any owner or custodian of any commodity, weight, or measure who sells, or offers for sale, or  
 11707 otherwise disposes of, or attempts to dispose of, any such commodity, weight or measure, while subject  
 11708 to a stop-sale, stop-use, or stop-removal order, or while seized and impounded, is guilty of a Class 1  
 11709 misdemeanor. Any owner or custodian of any such commodity, weight or measure who feels aggrieved  
 11710 by any action of the Commissioner hereunder shall have the right to apply for a judicial review of the  
 11711 action in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

11712 § 3.2-5613. Sealing or marking of weights and measures; condemnation of incorrect weights and  
 11713 measures.

11714 The Commissioner shall approve for use and seal or mark such weights and measures as he finds,  
 11715 upon inspection and test, to be in compliance as specified in § 3.2-5620, and shall reject and mark or  
 11716 tag as "Condemned for Repairs" such weights and measures as he finds, upon inspection or test, not to  
 11717 be in compliance as specified in § 3.2-5620, but that in his best judgment are susceptible to satisfactory  
 11718 repair. Sealing or marking shall not be required for weights and measures exempted by a Board  
 11719 regulation issued under the authority of §§ 3.2-5607 and 3.2-5620. The Commissioner shall condemn,  
 11720 and may seize and may destroy, weights and measures found not to be in compliance that, in his best  
 11721 judgment, are not susceptible to satisfactory repair. Weights and measures that have been "condemned  
 11722 for repairs" may be confiscated and may be destroyed by the Commissioner if not brought into  
 11723 compliance as required by § 3.2-5621 of this chapter, and may be confiscated and destroyed if used or  
 11724 disposed of contrary to the requirements of that section.

11725 § 3.2-5614. Police powers of Commissioner.

11726 With respect to the enforcement of this chapter and any other acts dealing with weights and  
 11727 measures that he is, or may be, empowered to enforce, the Commissioner is hereby vested with police  
 11728 powers, and is authorized to arrest any violator of the said acts and to seize for use as evidence,  
 11729 without formal warrant, incorrect or unsealed weights and measures or amounts or packages of  
 11730 commodity, found to be used, retained, offered, or exposed for sale, or sold in violation of law. In the  
 11731 performance of his official duties, the Commissioner is authorized to enter and go into or upon, without  
 11732 formal warrant, any structure or premises, and to stop any person whatsoever if necessary to apprehend  
 11733 such person and to require him to proceed, with or without any vehicle of which he may be in charge,  
 11734 to some place that the Commissioner may specify.

11735 § 3.2-5615. Appointment, terms and compensation of local sealers of weights and measures;  
 11736 discontinuance of local program.

11737 The governing bodies of the respective counties and cities may appoint a sealer of weights and  
 11738 measures. However, two or more counties may appoint jointly a sealer subject to the approval of the  
 11739 Commissioner. Sealers appointed under this chapter shall hold office for such terms and shall receive  
 11740 such salaries, as the appointing powers may prescribe. Such salaries shall be paid out of the county or  
 11741 city treasury, as the case may be. No county or city employing a sealer or sealers and conducting a  
 11742 weights and measures program shall discontinue the program without first giving the Commissioner 12  
 11743 months' written notice of its intent to do so.

11744 § 3.2-5616. *Fees of sealers.*

11745 *No fee shall be charged by the sealer of weights and measures, or by the county or city, for*  
11746 *inspecting, testing, or sealing of weights or measures, except that the governing body of a city or county*  
11747 *employing a sealer may, by ordinance, prescribe a schedule of fees for such services as are rendered by*  
11748 *agreement with or at the request of the person or party served. Such fees shall be used only to defray*  
11749 *the cost of such services.*

11750 § 3.2-5617. *Powers and duties of sealers and deputies.*

11751 *The sealer of a city or of a county, and his deputy when acting under his instructions and at his*  
11752 *direction, shall have the same powers and shall perform the same duties within the city or the county*  
11753 *for which appointed as are granted to and imposed upon the Commissioner by §§ 3.2-5609, 3.2-5610,*  
11754 *3.2-5611, 3.2-5612, 3.2-5613, 3.2-5614, and 3.2-5619.*

11755 § 3.2-5618. *Standards, equipment, and office space for sealers.*

11756 *The governing body of each city and county for which a sealer has been appointed as provided for*  
11757 *by § 3.2-5615 of this chapter shall: (i) procure at the expense of the city or county, as the case may be,*  
11758 *such standards of weight and measure and such additional equipment, to be used for the enforcement of*  
11759 *the provisions of this chapter in such city or county, as may be prescribed by the Commissioner; (ii)*  
11760 *provide a suitable office for the sealer; and (iii) make provisions for the necessary clerical services,*  
11761 *supplies, and transportation, and for defraying contingent expenses incident to the official activities of*  
11762 *the sealer in carrying out the provisions of this chapter. When the standards of weight and measure*  
11763 *required by this section to be provided by a city or county shall have been examined and approved by*  
11764 *the Commissioner, they shall be the official standards for such city or county. It shall be the duty of the*  
11765 *sealer to make, or to arrange to have made, at least as frequently as once a year, comparison between*  
11766 *his field standards and appropriate standards of a higher order belonging to his city or county or to the*  
11767 *Commonwealth, in order to maintain such field standards in accurate condition.*

11768 § 3.2-5619. *Commissioner to have concurrent authority with sealers; ordinances in conflict with*  
11769 *chapter.*

11770 *In cities and counties where sealers of weights and measures have been appointed as provided for in*  
11771 *this chapter, the Commissioner shall have concurrent authority to enforce the provisions of this chapter.*  
11772 *The provisions of this chapter shall be the law throughout the Commonwealth and no city or county*  
11773 *shall pass or enforce ordinances in conflict.*

11774 § 3.2-5620. *Specifications and tolerances for weighing and measuring devices.*

11775 *The specifications, tolerances, and regulations for commercial weighing and measuring devices,*  
11776 *together with amendments thereto, as recommended by the National Institute of Standards and*  
11777 *Technology, and published in the National Institute of Standards and Technology Handbook 44 and*  
11778 *supplements thereto, or any publication revising, supplementing, or superseding Handbook 44, shall be*  
11779 *the specifications, tolerances, and regulations for commercial weighing and measuring devices of the*  
11780 *Commonwealth, except insofar as specifically modified, amended, or rejected by regulation issued by the*  
11781 *Board. For purposes of this chapter, weights and measures shall be deemed to be in compliance with*  
11782 *this chapter: (i) when they conform to all applicable requirements of Handbook 44 and supplements*  
11783 *thereto, or any publication revising, supplementing, or superseding Handbook 44; or (ii) when they*  
11784 *conform to any regulation adopted by the Board to modify, amend, or reject Handbook 44, as specified*  
11785 *in this section. Other weights and measures shall not be in compliance.*

11786 § 3.2-5621. *Rejected weights and measures.*

11787 *Weights and measures that have been rejected or condemned for repair under the authority of the*  
11788 *Commissioner, of an inspector, or of a sealer shall remain subject to the control of the rejecting*  
11789 *authority until such time as suitable repair or disposition thereof has been made as required by this*  
11790 *section. The owners of such rejected weights and measures shall cause the same to be made in*  
11791 *compliance with this chapter within such time as may be authorized by the rejecting authority, or, in*  
11792 *lieu of this, may dispose of the same, but only in such a manner as is specifically authorized by the*  
11793 *rejecting authority. Weights and measures that have been rejected shall not again be used commercially*  
11794 *until they have been officially reexamined by the rejecting authority, and found to be in compliance with*  
11795 *this chapter, or until specific written permission for such use is issued by the rejecting authority.*

11796 § 3.2-5622. *How certain commodities to be sold.*

11797 *Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as*  
11798 *otherwise provided in this chapter, commodities not in liquid form shall be sold by weight, by measure*  
11799 *of length or area, or by count. Liquid commodities may be sold by weight, and commodities not in*  
11800 *liquid form may be sold by count, only if such methods give accurate information as to the quantity of*  
11801 *commodity sold. The provisions of this section shall not apply to: (i) commodities when sold for*  
11802 *immediate consumption on the premises where sold; (ii) vegetables when sold by the head or bunch;*  
11803 *(iii) commodities in containers standardized by law; (iv) commodities in package form when there exists*  
11804 *a general consumer usage to express the quantity in some other manner; (v) concrete aggregates,*  
11805 *concrete mixtures, and loose solid materials, including earth, soil, gravel and crushed stone, when sold*



11806 by cubic measure; (vi) unprocessed vegetable and animal fertilizer when sold by cubic measure; or (vii)  
 11807 peanuts in large multiple bag lots being sold by cleaners or shellers to processors for further processing  
 11808 or repacking. The articles in clauses (i) through (vii) may be sold on a gross weight basis if agreed  
 11809 upon in writing by the mutual consent of the buyer and seller.

11810 The Uniform Regulation for the Method of Sale of Commodities as adopted by the National  
 11811 Conference on Weights and Measures and published in National Institute of Standards and Technology  
 11812 Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall  
 11813 apply to the method of sale of commodities in the Commonwealth, except insofar as modified, amended,  
 11814 or rejected by regulation issued by the Board.

11815 § 3.2-5623. Information to be shown on packages.

11816 Except as otherwise provided in this chapter, any commodity in package form, introduced or  
 11817 delivered for introduction into, or received in, intrastate commerce, kept for the purpose of sale, or  
 11818 offered or exposed for sale, shall bear on the outside of the package a definite, plain, and conspicuous  
 11819 declaration of: (i) the identity of the commodity in the package unless the same can easily be identified  
 11820 by an actual or prospective buyer through the wrapper or container; (ii) the net quantity of the contents  
 11821 in terms of weight, measure, or count; and (iii) in the case of any package kept, offered, or exposed for  
 11822 sale, or sold any place other than on the premises where packed, the name and place of business of the  
 11823 manufacturer, packer, or distributor. In connection with the declaration required under clause (ii) of  
 11824 this section the qualifying term "when packed," or words of similar import shall not be used, nor shall  
 11825 any term qualifying a unit of weight, measure, or count including "jumbo," "giant," "full" that tends to  
 11826 exaggerate the amount of commodity in a package be used.

11827 The Uniform Regulation for Packaging and Labeling as adopted by the National Conference on  
 11828 Weights and Measures and published in National Institute of Standards and Technology Handbook 130,  
 11829 "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the  
 11830 method of sale of commodities in the Commonwealth, except insofar as modified or rejected by  
 11831 regulation.

11832 § 3.2-5624. Certain packages to show price per single unit of weight, measure, or count.

11833 In addition to the declarations required by § 3.2-5623 of this chapter, any commodity in package  
 11834 form, the package being one of a lot containing random weights, measures, or counts of the same  
 11835 commodity and bearing the total selling price of the package, shall bear on the outside of the package a  
 11836 plain and conspicuous declaration of the price per single unit of weight, measure, or count.

11837 § 3.2-5625. Misleading containers prohibited; contents of container not to fall below standard.

11838 No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed,  
 11839 or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents  
 11840 of a container shall not fall below such reasonable standard of fill as may have been prescribed for the  
 11841 commodity in question by the Board.

11842 § 3.2-5626. Advertisement of commodities in package form.

11843 Whenever a commodity in package form is advertised in any manner and the retail price of the  
 11844 package is stated in the advertisement, there shall be a declaration of the basic quantity of contents of  
 11845 the package as is required by law or regulation to appear on the package. Such declaration shall be  
 11846 close to, and conspicuously associated with, the statement of price on the package.

11847 § 3.2-5627. Pricing of retail merchandise.

11848 A. In a point-of-sale system the selling price of a consumer item displayed or offered for sale at  
 11849 retail shall be clearly and conspicuously indicated in Arabic numerals, so as to be readable and  
 11850 understandable by visual inspection, and shall be stamped upon or affixed to the consumer item or  
 11851 posted at or adjacent to the display.

11852 The provisions of this section shall not apply to: (i) greeting cards sold individually that have a code  
 11853 price, readable and understandable by visual inspection, on the back of the card; or (ii) merchandise  
 11854 ordered as a gift by a consumer that is sent by mail or other delivery service to a person other than the  
 11855 consumer by the retailer at the request of the consumer.

11856 B. Any person who knowingly violates the provisions of this section is guilty of a Class 4  
 11857 misdemeanor.

11858 § 3.2-5628. Weights and Measures Fund established; purpose.

11859 There is hereby established in the state treasury a special nonreverting fund to be known as the  
 11860 Weights and Measures Fund, hereinafter referred to as "the Fund." This Fund shall be established on  
 11861 the books of the Comptroller. All money designated for inclusion in the Fund or collected pursuant to  
 11862 this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in  
 11863 the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including  
 11864 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in  
 11865 the Fund. The income and principal of this Fund shall be used only for the purposes of administering  
 11866 and enforcing this chapter and Chapter 57 (§ 3.2-5700 et seq.) of this title.

11867 § 3.2-5629. *Fees and other moneys received.*

11868 *No fees shall be charged for the services of any appointee under this chapter unless such services*  
11869 *are special, unusual or noncommercial and rendered by agreement with or at the request of the person*  
11870 *served.*

11871 *In the event services be rendered by agreement with or at the request of the party served such fees*  
11872 *may be charged as the Commissioner may deem proper. All fees and moneys collected or received*  
11873 *pursuant hereto shall be paid into the state treasury to be there maintained in the Weights and*  
11874 *Measures Fund (§ 3.2-5628) for the administration and carrying out of the provisions of this chapter.*

11875 § 3.2-5630. *Violations of pricing requirements.*

11876 *It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a retail*  
11877 *merchant to fail to comply with the provisions of § 3.2-5627.*

11878 § 3.2-5631. *Representations as to price; signs advertising price of petroleum products.*

11879 *Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight,*  
11880 *measure or count, the price shall not be misrepresented, nor shall the price be represented in any*  
11881 *manner tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised,*  
11882 *posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements*  
11883 *of the fraction shall be prominently displayed and the numerals expressing the fraction shall be*  
11884 *immediately adjacent to, of the same general design and style as, and at least one half the height and*  
11885 *width of, the numerals representing the whole cents. Whenever the price of petroleum products is*  
11886 *advertised or posted at retail, the amount of any taxes may not be shown separately in such advertising*  
11887 *or posting unless the words "plus tax" and the numerals expressing the taxes are prominently displayed*  
11888 *in letters and numerals of the same general design and style as, and at least one half the height and*  
11889 *width of, the numerals representing the price as specified in this section. The total price of the*  
11890 *petroleum products so advertised or posted shall not differ from the price as shown on the pump or in*  
11891 *any computed price charged the customer.*

11892 § 3.2-5632. *Failure to pay advertised cash discount.*

11893 *Where a discount for the cash purchase of retail petroleum products is offered, willful failure by any*  
11894 *person to pay to the customer the full cash discount as offered shall constitute a violation of this*  
11895 *chapter.*

11896 § 3.2-5633. *Commissioner to receive enforcement authority for the Stage II Vapor Recovery*  
11897 *Programs.*

11898 *A. Upon the request of the Commissioner, the State Air Pollution Control Board may delegate to the*  
11899 *Commissioner its authority under Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and*  
11900 *enforce any provisions of its regulations covering the storage and transfer of petroleum liquids. Upon*  
11901 *receiving such delegation, the authority to implement and enforce the regulations under Chapter 13 of*  
11902 *Title 10.1 shall be vested solely in the Commissioner, notwithstanding any provision of law contained in*  
11903 *Title 10.1, except as provided herein. The State Air Pollution Control Board, in delegating its authority*  
11904 *under this section, may make the delegation subject to any conditions it deems appropriate to ensure*  
11905 *effective implementation of the regulations according to the policies of the State Air Pollution Control*  
11906 *Board.*

11907 *B. In addition to the Commissioner's authority to implement and enforce any provisions of the*  
11908 *regulations of the State Air Pollution Control Board covering the storage and transfer of petroleum*  
11909 *liquids, the Board may adopt regulations as are reasonably necessary for the administration, monitoring*  
11910 *and enforcement of the law relating to the storage and transfer of petroleum liquids. Any violation of*  
11911 *the provisions covering the storage and transfer of petroleum liquids shall be deemed to be a violation*  
11912 *of this chapter, and the Commissioner may take appropriate enforcement action pursuant to the*  
11913 *provisions of this chapter.*

11914 § 3.2-5634. *Meat, poultry, and seafood.*

11915 *All meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or*  
11916 *exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight, except for*  
11917 *immediate consumption on the premises where sold, or as one of several elements comprising a*  
11918 *ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold. When*  
11919 *meat, poultry, or seafood is combined with or associated with some other food elements to form either a*  
11920 *distinctive food product or a food combination, such food product or combination shall be offered or*  
11921 *exposed for sale and sold by weight, and the quantity representation may be the total weight of the*  
11922 *product or combination, and a quantity representation need not be made for each of the several*  
11923 *elements of the product or combination. Cooked poultry that is offered or exposed for sale, or sold, as a*  
11924 *commodity in package form, it may be sold by minimum net weight and so labeled notwithstanding the*  
11925 *provisions of § 3.2-5623 of this chapter.*

11926 § 3.2-5635. *Bulk sale and delivery of commodities.*

11927 *All sales in which the buyer and seller are not both present to witness the measurement of a bulk*  
11928 *delivery shall be accompanied by duplicate delivery tickets containing the following information:*

- 11929 1. The name and address of the buyer and seller;
- 11930 2. The date of delivery;
- 11931 3. The quantity delivered in terms of pounds, tons, gallons or cubic measure; and
- 11932 4. If applicable, the count of individually wrapped packages, if more than one.
- 11933 § 3.2-5636. Scale house in establishment where livestock is bought from producers.
- 11934 The scale house at any livestock auction market, receiving station, packing plant, or other
- 11935 establishment where livestock is regularly bought from producers shall be constructed so that all parties
- 11936 in interest may readily observe the weighing of livestock. The weighbeam or indicating apparatus shall
- 11937 be situated so that the weight indications thereon are clearly visible to public view. Provisions shall be
- 11938 made whereby the weighmaster from his normal weighing position has full view of the stock rack on the
- 11939 scale platform, the approaches thereto, and the livestock being weighed. Ready access from the
- 11940 unloading platform or chutes to the scale house must be provided to enable owners of livestock to get to
- 11941 the scale in time to see their livestock weighed. A sign clearly visible to public view shall be affixed on
- 11942 or adjacent to the scale house with the following phrase in letters at least three inches in height: "TO
- 11943 HELP AVOID ERRORS WATCH LIVESTOCK WEIGHED."
- 11944 § 3.2-5637. Type registering weighbeams or automatic weight recorders required.
- 11945 Type registering weighbeams or automatic weight recorders shall be installed and used with proper
- 11946 tickets for weighing livestock at all livestock auction markets.
- 11947 § 3.2-5638. Weight of livestock to be determined on date of sale.
- 11948 When livestock is offered for sale on a weight basis at livestock auction markets on regular sale
- 11949 days, the weights thereof shall be determined on the date of the sale at such auction markets unless
- 11950 otherwise publicly announced at the auction ring at time of sale.
- 11951 § 3.2-5639. Announcement of day and hour of livestock sale.
- 11952 The operator of the livestock auction market shall publicly announce the day and hour when an
- 11953 auction sale of livestock is to begin at least one week in advance of the day of sale so chosen and shall
- 11954 include the time of sale in all information thereafter published concerning the sale. Auction sale of
- 11955 livestock shall begin on the day and hour so selected.
- 11956 § 3.2-5640. Certain merchants to provide scales for use of customers.
- 11957 Any person engaged, in the sale of items by weight from a self-service bulk display, shall make
- 11958 available a scale for use by his customers and shall upon request provide customer assistance in
- 11959 weighing of all commodities. The scale shall be accurate and maintained in good working order.
- 11960 § 3.2-5641. Use of word "cord" in connection with purchase or sale of wood, bark, or other forest
- 11961 product.
- 11962 It shall be unlawful to use the word "cord" or any abbreviation thereof other than to mean the
- 11963 standard as defined in § 3.2-5600 in, or in connection with the purchase or sale of pulpwood, firewood,
- 11964 tanbark, or any forest product customarily measured in cords of any size whatever, or in connection
- 11965 with any quotation of price, or measurement of, or settlement, or payment for any such wood, bark or
- 11966 product, in reference to any cord, unit or measurement.
- 11967 § 3.2-5642. Determining number of board feet in tree or log.
- 11968 The standard rule for determining the number of board feet in a tree or log in the Commonwealth
- 11969 shall be the "International 1/4 Inch Log Rule." The provisions of this section shall not prevent the buyer
- 11970 and the seller from agreeing that some other unit of measurement shall be used to determine the number
- 11971 of board feet in trees or logs, provided that such other unit of measurement is specified in a written
- 11972 contract between them.
- 11973 § 3.2-5643. Obstructing Commissioner or sealers; penalty.
- 11974 Any person who shall hinder or obstruct in any way the Commissioner, his assistant, or any one of
- 11975 the inspectors, or a sealer in the performance of his official duties is guilty of a Class 1 misdemeanor.
- 11976 § 3.2-5644. Impersonating Commissioner or sealer.
- 11977 Any person who shall impersonate in any way the Commissioner, his agent, or any one of the
- 11978 inspectors, or a sealer by the use of his seal or a counterfeit of his seal, or in any other manner, is
- 11979 guilty of a Class 1 misdemeanor.
- 11980 § 3.2-5645. Certain acts declared misdemeanors.
- 11981 Any person who, by himself or by his servant or agent, or as the servant or agent of another person,
- 11982 performs any one of the acts enumerated in subdivisions 1 through 9 of this section is guilty of a Class
- 11983 1 misdemeanor:
- 11984 1. Use or have in possession for the purpose of using for any commercial purpose, sell, offer, or
- 11985 expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight
- 11986 or measure of any device or instrument used to or calculated to falsify any weight or measure.
- 11987 2. Use or have in possession for the purpose of current use for any commercial purpose specified in
- 11988 § 3.2-5609 a weight or measure that does not bear a seal or mark such as is specified in § 3.2-5613,
- 11989 unless such weight or measure has been exempted from testing by the provisions of § 3.2-5609 or by a

- 11990 regulation of the Board issued under the authority of § 3.2-5607 or 3.2-5620.
- 11991 3. Dispose of any rejected or condemned weight or measure in a manner contrary to law or  
11992 regulation.
- 11993 4. Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed  
11994 thereon by the appropriate authority.
- 11995 5. Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or  
11996 service.
- 11997 6. Take more than the quantity he represents of any commodity, thing, or service when, as buyer, he  
11998 furnishes the weight or measure by means of which the amount of the commodity, thing, or service is  
11999 determined.
- 12000 7. Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing,  
12001 or service in a condition or manner contrary to law or regulation.
- 12002 8. Use in retail trade a weight or measure that is not so positioned that its indications may be  
12003 accurately read and the weighing or measuring operation observed from some position that may  
12004 reasonably be assumed by a customer, except in the preparation of packages put up in advance of sale  
12005 and of medical prescriptions.
- 12006 9. Violate any provisions of this chapter or of the regulations promulgated under the provisions of  
12007 this chapter for which a specific penalty has not been prescribed.
- 12008 § 3.2-5646. Civil penalties; suit to enjoin violation; compromise.
- 12009 A. The Commissioner may bring a suit to enjoin the violation of any provision of this chapter, or  
12010 any regulation made pursuant thereto, in the circuit court of the county or city where the violation  
12011 occurs, or in the Circuit Court of the City of Richmond if the violation may affect more than one county  
12012 or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney  
12013 General to take action under this section, when appropriate.
- 12014 B. Any person violating a provision of this chapter or regulations adopted hereunder may be  
12015 assessed a civil penalty by the Board in an amount not to exceed \$1,000. In determining the amount of  
12016 any civil penalty, the Board shall give due consideration to: (i) the history of previous violations of the  
12017 person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged  
12018 in attempting to achieve compliance with the chapter after notification of the violation.
- 12019 C. Civil penalties assessed under this section shall be paid into the Weights and Measures Fund as  
12020 established in § 3.2-5628. The Commissioner shall prescribe procedures for payment of uncontested  
12021 penalties. The procedure shall include provisions for a person to consent to abatement of the alleged  
12022 violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability  
12023 arising from such alleged violation.
- 12024 Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon  
12025 certification of such orders by the Commissioner. The orders may be appealed in accordance with the  
12026 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).
- 12027 § 3.2-5647. Warning instead of report of violation.
- 12028 Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution  
12029 of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes  
12030 that the public interest will be adequately served in the circumstances by a suitable written notice or  
12031 warning.
- 12032 § 3.2-5648. Presumptive proof of use of weight, measure or weighing or measuring device.
- 12033 For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or  
12034 measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is  
12035 shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the  
12036 contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring  
12037 device for commercial purposes, and shall be presumptive proof of such regular use by the person in  
12038 charge of such building, enclosure, stand, or vehicle.
- 12039 CHAPTER 57.
- 12040 WEIGHTS AND MEASURES SERVICE AGENCIES AND TECHNICIANS.
- 12041 § 3.2-5700. Definitions.
- 12042 As used in this chapter, unless the context requires a different meaning:
- 12043 "Certificate of Conformance" means a document issued by the National Type Evaluation Program of  
12044 the National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce based  
12045 on testing in participating laboratories, said document constituting evidence of conformance of a type  
12046 with the requirements of:
- 12047 1. National Institute of Standards and Technology Handbook 44; Specifications, Tolerances, and  
12048 Other Technical Requirements for Weighing and Measuring Devices;
- 12049 2. National Institute of Standards and Technology Handbook 105-1, Specifications and Tolerances  
12050 for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for  
12051 Field Standard Weights (NIST Class F);

12052 3. National Institute of Standards and Technology Handbook 105-2, Specifications and Tolerances  
12053 for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for  
12054 Field Standard Measuring Flasks; and

12055 4. National Institute of Standards and Technology Handbook 105-3, Specifications and Tolerances  
12056 for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for  
12057 Graduated Neck Type Volumetric Field Standards, and supplements thereto, or any publication revising  
12058 or superseding the publications specified in this definition.

12059 "Condemnation tag" means a tag applied to a weight or measure that fails to pass an official  
12060 inspection, the application of which tag requires the immediate removal of the weight or measure from  
12061 service.

12062 "Official inspection" means an inspection by the Commissioner of a commercially used weight or  
12063 measure pursuant to § 3.2-5609.

12064 "Rejection tag" means a tag applied to a weight or measure that fails to pass an official inspection,  
12065 the application of which tag requires the removal of the weight or measure from service if the weight or  
12066 measure is not adjusted to conform to requirements specified by the Weights and Measures Act of  
12067 Virginia (§ 3.2-5600 et seq.) or any regulation adopted hereunder.

12068 "Service agency" means: (i) a business; or (ii) that portion of a government or political subdivision  
12069 engaged in the adjustment, installation, placing in service, recommending for use, reconditioning,  
12070 repairing, servicing, or selling of any weight or measure commercially used or employed (a) in  
12071 establishing the size, quantity, extent, area, or measurement of quantities, things, products, or articles  
12072 for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or (b) in  
12073 computing any basic charge or payment for services rendered on the basis of something's weight or its  
12074 measure.

12075 "Service technician" means any individual who for hire, award, commission, or any other payment of  
12076 any kind, adjusts, installs, places in service, recommends for use, reconditions, repairs, services, or sells  
12077 a commercial weight or measure.

12078 "Standard" means a required basis for conformance, adjustment, or verification.

12079 "System" means the grouping of interacting, interrelated, or interdependent weights or measures to  
12080 form a complex whole.

12081 "Traceability" means an accounting of the relationship of the calibration of a weight or measure  
12082 standard or calibrating equipment to a national standard maintained or adopted by the National  
12083 Institute of Standards and Technology of the U.S. Department of Commerce.

12084 "Weight or measure" means the terms as defined in § 3.2-5600 and shall also include the term  
12085 "system" as defined in this chapter.

12086 § 3.2-5701. Powers of the Board.

12087 The Board may adopt regulations establishing: (i) schedules for the verification of weights or  
12088 measures standards and calibrating equipment used by service agencies and service technicians; (ii) fees  
12089 for the registration of service agencies and the certification of service technicians; (iii) categories of  
12090 registration of service agencies and additional requirements for such registration; (iv) categories of  
12091 certification of service technicians and additional requirements for such certification; (v) curricula of  
12092 training courses for certification and renewal thereof for service technicians; and (vi) any other  
12093 provision for the enforcement and implementation of this chapter, or otherwise necessary or convenient  
12094 to carry out the purposes of this chapter.

12095 § 3.2-5702. Delegation of authority.

12096 The Board may delegate to the Commissioner: (i) any authority vested in it under this chapter,  
12097 except the authority to adopt regulations; and (ii) any authority contained in § 3.2-5646 relating to the  
12098 assessment of civil penalties.

12099 § 3.2-5703. Registration of service agency.

12100 A. A service agency shall not operate in the Commonwealth without first obtaining registration  
12101 issued annually by the Commissioner. The application for registration as a service agency or renewal of  
12102 application shall be made in writing on a form supplied by the Commissioner. Each application for  
12103 registration or renewal shall contain:

12104 1. The name of the service agency, including any fictitious names under which it intends to operate;

12105 2. The principal business address of the service agency;

12106 3. The name of every person functioning as a service technician in the Commonwealth who is in the  
12107 employ of the service agency;

12108 4. Documentation of verification pursuant to § 3.2-5706 of the weights or measures standards and  
12109 calibrating equipment used or to be used by the service agency; and

12110 5. The fee required by § 3.2-5704.

12111 B. The Commissioner may deny, suspend or revoke any registration or renewal if the application is  
12112 incomplete, false, or fraudulent. It shall be a violation of this chapter for a person to submit to the

12113 *Commissioner an application for registration or renewal that he knows to be false or fraudulent.*

12114 *§ 3.2-5704. Registration fee.*

12115 *Except as otherwise provided by § 3.2-5705, each service agency shall pay annually a registration*  
12116 *fee of \$100. All fees collected pursuant to this section shall be deposited in the state treasury and*  
12117 *credited to the Weights and Measures Fund, established by § 3.2-5628.*

12118 *§ 3.2-5705. Exemption from registration fee.*

12119 *A. No service agency shall be required to pay a registration fee under the provisions of this chapter*  
12120 *if it is:*

12121 *1. A business employing service technicians to install, place in service, adjust, repair, service, or*  
12122 *recondition weights or measures that are owned or operated by the business but that are used by no*  
12123 *other business; or*

12124 *2. A government or political subdivision engaged in the installation, placing in service, adjusting,*  
12125 *repairing, servicing, or reconditioning of weights or measures owned or operated by the government or*  
12126 *political subdivision.*

12127 *B. A service technician that is employed by a business that is exempt from paying a registration fee*  
12128 *pursuant to subsection A of this section shall not be required to pay a certification fee under the*  
12129 *provisions of this chapter.*

12130 *§ 3.2-5706. Examination and verification of standards and calibrating equipment.*

12131 *Every service agency shall submit any weights or measures standard and calibrating equipment used*  
12132 *or to be used by the service agency to the Commissioner for examination and verification, in*  
12133 *accordance with a schedule established by the Commissioner. Any weights or measures standard or*  
12134 *calibrating equipment calibrated by the weights and measures laboratory of another state, of a territory,*  
12135 *or of a protectorate of the United States shall be deemed to be properly calibrated and hence lawful for*  
12136 *use in the Commonwealth if the service agency proffering for use the weights or measures standard or*  
12137 *calibrating equipment can demonstrate the traceability of the weights or measures standard or*  
12138 *calibrating equipment.*

12139 *§ 3.2-5707. Certification of service technicians.*

12140 *A. A person shall not be certified as a service technician unless the service technician is employed*  
12141 *by a registered service agency. Every service technician shall obtain certification by the Commissioner*  
12142 *before operating in the Commonwealth and shall renew the certification annually. The application for*  
12143 *certification as a service technician or renewal shall be made in writing on a form supplied by the*  
12144 *Commissioner. Each application for certification or renewal thereof shall contain:*

12145 *1. The full name of the applicant;*

12146 *2. The name of the service agency employing the applicant;*

12147 *3. The principal business address of the service agency that employs the service technician;*

12148 *4. Presentation of proof of completion of a course of training related to weights and measures*  
12149 *offered by the Commissioner, or in the absence of a training course offered by the Commissioner, a*  
12150 *training course approved by the Commissioner. Except as otherwise provided by regulation, such*  
12151 *training course shall be valid for a period of three years after the date of taking the course;*

12152 *5. The fee required by § 3.2-5708; and*

12153 *6. A declaration by the applicant that the applicant has the authority to be lawfully employed in the*  
12154 *United States.*

12155 *B. The Commissioner may deny, suspend, or revoke any certification or renewal if the application for*  
12156 *certification is incomplete, false, or fraudulent. It shall be a violation of this chapter for a person to*  
12157 *submit to the Commissioner an application for certification or renewal that he knows to be false or*  
12158 *fraudulent.*

12159 *§ 3.2-5708. Certification fee.*

12160 *Each service technician applying for a certification or renewal of certification shall pay annually a*  
12161 *certification fee of \$25. All fees collected pursuant to this section shall be deposited in the state treasury*  
12162 *and credited to the Weights and Measures Fund established by § 3.2-5628.*

12163 *§ 3.2-5709. Service of weights and measures; repair.*

12164 *A. Any registered service agency or any certified service technician in the employ of the service*  
12165 *agency may: (i) place into service, subject to random official inspection, a new or used weight or*  
12166 *measure; and (ii) following corrective repair, remove and destroy any rejection tag or condemnation tag*  
12167 *and return the weight or measure to service.*

12168 *B. A service agency or service technician in the employ of the service agency exercising authority*  
12169 *under subsection A of this section shall adjust any weight or measure governed by subsection A as*  
12170 *closely as practicable to zero error.*

12171 *§ 3.2-5710. Certificate of Conformance.*

12172 *Any service agency engaged in the sale of any weights or measures shall sell only weights or*  
12173 *measures that have received a Certificate of Conformance. Any service agency or service technician*  
12174 *engaged in the adjustment, installation, placing in service, recommending for use, repair, or servicing of*

12175 any weight or measure shall do so in a manner so as to ensure the continued validity of the Certificate  
12176 of Conformance.

12177 § 3.2-5711. Service report.

12178 Every service agency shall furnish each service technician in its employ with a supply of report  
12179 forms entitled "Placed into Service Report" prescribed by the Commissioner. Within five business days  
12180 after its service technician has placed in or restored to service a weight or measure, the service agency  
12181 shall provide to the Commissioner a fully executed Placed into Service Report. The service agency shall  
12182 provide a copy of the fully executed Placed into Service Report to the owner or operator of the weight  
12183 or measure and shall retain for a period of one year, reckoned from the date of execution, a copy of the  
12184 fully executed Placed into Service Report, which is subject to inspection by the Commissioner. The  
12185 Commissioner may accept the Placed into Service Report as sufficient to meet the statutory testing and  
12186 inspection requirements in § 3.2-5609.

12187 § 3.2-5712. Denial, suspension, or revocation of registrations and certifications.

12188 A. The Commissioner may deny, suspend, or revoke the registration of any service agency if he  
12189 determines that: (i) the service agency has violated any provision of this chapter, any provision of  
12190 Chapter 56 (§ 3.2-5600 et seq.), or any regulation adopted under either chapter; or (ii) when, in the  
12191 service of the service agency, any officer of the service agency or any service technician has been  
12192 convicted in any appropriate court of violating any provision of this chapter, any provision of Chapter  
12193 56, or any regulation adopted under either chapter.

12194 B. The Commissioner may deny, suspend, or revoke the certification of any service technician when  
12195 the Commissioner determines that: (i) the service technician has violated any provision of this chapter  
12196 or any regulation adopted pursuant to this chapter; or (ii) the service technician has been convicted in  
12197 any appropriate court of violating any provision of this chapter, any provision of Chapter 56, or any  
12198 regulation adopted under either chapter.

12199 C. The Commissioner shall afford reasonable notice of an informal fact finding pursuant to  
12200 § 2.2-4019 to: (i) any service agency prior to and in connection with the denial, suspension, or  
12201 revocation of its registration under subsection A; and (ii) any service technician prior to and in  
12202 connection with the denial, suspension, or revocation of the service technician's certification under  
12203 subsection B.

12204 § 3.2-5713. Penalties.

12205 A. Any person violating any provision of this chapter is guilty of a Class 1 misdemeanor, and may,  
12206 in addition to or in lieu thereof, be assessed a civil penalty, as provided in § 3.2-5714.

12207 B. Nothing in this chapter shall be construed as requiring the Commissioner to report, for the  
12208 institution of proceedings under this chapter, minor violations of this chapter, whenever the  
12209 Commissioner believes that the public interest will be adequately served in the circumstances by a  
12210 suitable written notice of warning.

12211 § 3.2-5714. Civil penalties.

12212 A. Any person violating any provision of this chapter or regulations adopted hereunder may be  
12213 assessed a civil penalty by the Board in an amount not to exceed \$1,000 per violation. In determining  
12214 the amount of any civil penalty, the Board shall give due consideration to: (i) the history of the person's  
12215 previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the  
12216 person charged in attempting to achieve compliance with the chapter after notification of the violation.

12217 B. Civil penalties assessed under this section shall be paid into the Weights and Measures Fund as  
12218 established by § 3.2-5628. The Commissioner shall prescribe procedures for payment of uncontested  
12219 penalties. The procedure shall include provisions for a person to consent to abatement of the alleged  
12220 violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability  
12221 arising from such alleged violation.

12222 C. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon  
12223 certification of such orders by the Commissioner. Such orders may be appealed in accordance with  
12224 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

#### 12225 CHAPTER 58.

#### 12226 PUBLIC WEIGHMASTERS.

12227 § 3.2-5800. Definitions.

12228 As used in this chapter, unless the context requires a different meaning:

12229 "Public weighing," means the weighing for any person, upon request, of property, produce,  
12230 commodities, or articles other than those that the weigher or his employer, or any, is either buying or  
12231 selling.

12232 "Vehicle" means any device in, upon, or by which any property, produce, commodity, or article is or  
12233 may be transported or drawn.

12234 § 3.2-5801. Commissioner to adopt regulations.

12235 The Commissioner may adopt regulations he deems necessary to carry out the provisions of this

12236 chapter.

12237 § 3.2-5802. *Qualifications of licensed public weighmasters.*

12238 A citizen of the United States or a person who has been lawfully admitted for permanent residence,  
12239 and is not less than 18 years of age, of good moral character, and who has the ability to weigh  
12240 accurately and to make correct weight certificates, and who has received from the Commissioner a  
12241 license as a licensed public weighmaster shall be authorized to act as a licensed public weighmaster.

12242 § 3.2-5803. *Application for license.*

12243 Application for a license as a licensed public weighmaster shall be made upon a form provided by  
12244 the Commissioner and the application shall furnish evidence that the applicant has the qualifications  
12245 required by § 3.2-5802.

12246 § 3.2-5804. *Determining qualifications of applicant; granting of license; record of applications and*  
12247 *licenses.*

12248 The Commissioner may adopt guidelines for determining the qualifications of the applicant for a  
12249 license as a licensed public weighmaster. He may pass upon the qualifications of the applicant upon the  
12250 basis of the information supplied in the application, or he may examine such applicant orally or in  
12251 writing or both for the purpose of determining his qualifications. He shall grant licenses as licensed  
12252 public weighmasters to such applicants as may be found to possess the qualifications required by  
12253 § 3.2-5802 of this chapter. The Commissioner shall keep a record of all such applications and of all  
12254 licenses issued thereon.

12255 § 3.2-5805. *Licenses and renewal fees.*

12256 Before the issuance of any license as a licensed public weighmaster, or any renewal thereof, the  
12257 applicant shall pay to the Commissioner a fee of \$10. Such fees shall be deposited with the State  
12258 Treasurer to be credited to a fund to be used by the Commissioner for the administration of this  
12259 chapter.

12260 § 3.2-5806. *Issuance of limited licenses to certain public officers and employees.*

12261 The Commissioner may, upon request and without charge, issue a limited license as a licensed public  
12262 weighmaster to any qualified officer or employee of a city or county of the Commonwealth or of a state  
12263 commission, board, institution, or agency, authorizing such officer or employee to act as a licensed  
12264 public weighmaster only within the scope of his official employment in the case of an officer or  
12265 employee of a city or county or only for and on behalf of the state commission, board, institution, or  
12266 agency in the case of an officer or employee thereof.

12267 § 3.2-5807. *Expiration of licenses; applications for renewal.*

12268 Each license as licensed public weighmaster shall be issued to expire on December 31 of the  
12269 calendar year for which it is issued. Any such license shall be valid through January 31 of the next  
12270 ensuing calendar year or until issuance of the renewal license, whichever event first occurs, if the  
12271 holder thereof shall have filed a renewal application with the Commissioner on or before December 15  
12272 of the year for which the current license was issued. Renewal applications shall be in such form as the  
12273 Commissioner shall prescribe.

12274 § 3.2-5808. *Oath and seal of licensed public weighmaster; Commonwealth not obligated to pay*  
12275 *compensation.*

12276 Each licensed public weighmaster shall, before entering upon his duties, make oath to execute  
12277 faithfully his duties. The issuance of a license as licensed public weighmaster shall not obligate the  
12278 Commonwealth to pay to the licensee any compensation for his services as a licensed public  
12279 weighmaster. Each licensed public weighmaster shall, at his own expense, provide himself with an  
12280 impression seal. His name and the words "Commonwealth of Virginia" shall be inscribed around the  
12281 outer margin of the seal and the words "licensed public weighmaster" shall appear in the center thereof.  
12282 The seal shall be impressed upon each weight certificate issued by a licensed public weighmaster.

12283 § 3.2-5809. *Form of weight certificate and information to be stated thereon; weight certificate as*  
12284 *evidence.*

12285 The Commissioner shall prescribe the form of weight certificate to be used by a licensed public  
12286 weighmaster. The weight certificate shall state the date of issuance, the kind of property, produce,  
12287 commodity, or article weighed, the name of the declared owner or agent of the owner or of the  
12288 consignee of the material weighed, the accurate weight of the material weighed, the means by which the  
12289 material was being transported at the time it was weighed, and such other available information as may  
12290 be necessary to distinguish or identify the property, produce, commodity, or article from others of like  
12291 kind. Such weight certificate when so made and properly signed and sealed shall be prima facie  
12292 evidence of the accuracy of the weights shown.

12293 § 3.2-5810. *Entries on weight certificate.*

12294 A licensed public weighmaster shall not enter on a weight certificate issued by him any weight  
12295 values but those he has personally determined, and he shall make no entries on a weight certificate  
12296 issued by some other person. A weight certificate shall be so prepared as to show clearly what weight  
12297 or weights were actually determined. If the certificate form provides for the entry of gross, tare, and net



12298 weights, in any case in which only the gross, the tare, or the net weight is determined by the  
 12299 weighmaster he shall strike through or otherwise cancel the printed entries for the weights not  
 12300 determined or computed. If gross and tare weights are shown on a weight certificate and both of these  
 12301 were not determined on the same scale and on the day for which the certificate is dated, the  
 12302 weighmaster shall identify on the certificate the scale used for determining each weight and the date of  
 12303 each determination.

12304 § 3.2-5811. Only suitable, tested and approved weighing devices to be used.

12305 When making a weight determination as provided for by this chapter a licensed public weighmaster  
 12306 shall use a weighing device that is of a type suitable for the weighing of the amount and kind of  
 12307 material to be weighed, and that has been tested and approved for use by a weights and measures  
 12308 officer of the Commonwealth within a period of 12 months immediately preceding the date of the  
 12309 weighing.

12310 § 3.2-5812. Capacity of scales not to be exceeded; determining gross or tare weight of vehicle or  
 12311 combination of vehicles.

12312 A licensed public weighmaster shall not use any scale to weigh a load the value of which exceeds  
 12313 the nominal or rated capacity of the scale. When the gross or tare weight of any vehicle or combination  
 12314 of vehicles is to be determined, the weighing shall be performed upon a scale having a platform of  
 12315 sufficient size to accommodate such vehicle or combination of vehicles fully, completely, and as one  
 12316 entire unit. If a combination of vehicles must be broken up into separate units in order to be weighed as  
 12317 prescribed herein, each such separate unit shall be entirely disconnected before weighing and a separate  
 12318 weight certificate shall be issued for each such separate unit.

12319 § 3.2-5813. Copies of weight certificates to be retained and kept open for inspection.

12320 A licensed public weighmaster shall keep and preserve for at least one year, or for such longer  
 12321 period as may be specified in the regulations authorized to be issued for the enforcement of this  
 12322 chapter, a legible copy of each weight certificate issued by him, which copies shall be open at all  
 12323 reasonable times for inspection by any weights and measures officer of the Commonwealth.

12324 § 3.2-5814. Weight certificates issued by weighmasters in other states.

12325 Whenever in any other state that licenses public weighmasters, there is statutory authority for the  
 12326 recognition and acceptance of the weight certificates issued by licensed weighmasters of the  
 12327 Commonwealth, the Commissioner is authorized to recognize and accept the weight certificates of the  
 12328 other state.

12329 § 3.2-5815. Certain persons permitted but not required to obtain licenses.

12330 The following persons shall not be required but shall be permitted to obtain licenses as licensed  
 12331 public weighmasters: (i) a weights and measures officer when acting within the scope of his official  
 12332 duties; (ii) a person weighing property, produce, commodities, or articles that he or his employers, if  
 12333 any, is either buying or selling; and (iii) a person weighing property, produce, commodities, or articles  
 12334 in conformity with the requirements of federal statutes or the statutes of his state relative to  
 12335 warehousemen or processors.

12336 § 3.2-5816. Certain acts forbidden to persons not licensed as public weighmasters.

12337 No person shall assume the title "licensed public weighmaster," or any title of similar import,  
 12338 perform the duties or acts to be performed by a licensed public weighmaster under this chapter, hold  
 12339 himself out as a licensed public weighmaster, issue any weight certificate, ticket, memorandum, or  
 12340 statement for which a fee is charged or engage in the full-time or part-time business of public weighing,  
 12341 unless he holds a valid license as a licensed public weighmaster.

12342 § 3.2-5817. Suspension or revocation of license.

12343 The Commissioner is authorized to suspend or revoke the license of any licensed public weighmaster:  
 12344 (i) when he is satisfied, after a hearing upon 10 days' notice to the licensee, that the said licensee has  
 12345 violated any provision of this chapter or of any regulation of the Commissioner affecting licensed public  
 12346 weighmasters; or (ii) when a licensed public weighmaster has been convicted in any appropriate court  
 12347 of violating any provision of this chapter or of any regulation issued under authority of this chapter.

12348 § 3.2-5818. Requesting false weighing or false weight certificate; issuance of weight certificate by  
 12349 unlicensed person.

12350 Any person who requests a licensed public weighmaster to weigh any property, produce, commodity,  
 12351 or article falsely or incorrectly, or who requests a false or incorrect weight certificate, or any person  
 12352 who issues a weight certificate simulating the weight certificate prescribed in this chapter and who is  
 12353 not a licensed public weighmaster, is guilty of a Class 4 misdemeanor; and upon a second or  
 12354 subsequent conviction such person is guilty of a Class 2 misdemeanor.

12355 § 3.2-5819. Falsification or presealing of weight certificate by licensed weighmaster; delegation of  
 12356 authority to unlicensed person.

12357 Any licensed public weighmaster who falsifies a weight certificate, or who delegates his authority to  
 12358 any person not licensed as a licensed public weighmaster, or who preseals a weight certificate with his

12359 *official seal before performing the act of weighing, is guilty of a Class 2 misdemeanor.*

12360 *§ 3.2-5820. Penalty for violation of chapter.*

12361 *Any person who violates any provision of this chapter or any regulation adopted pursuant thereto for*  
 12362 *which no specific penalty has been provided is guilty of a Class 4 misdemeanor.*

12363 *SUBTITLE V.*

12364 *DOMESTIC ANIMALS.*

12365 *CHAPTER 59.*

12366 *GENERAL PROVISIONS.*

12367 *§ 3.2-5900. Definitions.*

12368 *As used in this subtitle, unless the context requires a different meaning:*

12369 *"Accredited veterinarian" means a veterinarian approved by the Administrator of the U.S.*  
 12370 *Department of Agriculture in accordance with 9 CFR Part 161 (2004), which includes the authority to*  
 12371 *issue health certificates.*

12372 *"Animal" means any organism of the kingdom Animalia, other than a human being.*

12373 *"Hatching egg" means any egg of any chicken, turkey, waterfowl, or game bird, or the egg of any*  
 12374 *other avian species that is used or intended to be used for hatching purposes.*

12375 *"Horse" means any stallion, colt, gelding, mare, or filly.*

12376 *"Livestock" includes all domestic or domesticated bovine animals; equine animals; ovine animals;*  
 12377 *porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or*  
 12378 *shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed rabbits or hares raised for human*  
 12379 *food or fiber; or any other individual animal specifically raised for food or fiber, except companion*  
 12380 *animals.*

12381 *"Passport" means a document that may be used in lieu of a Certificate of Veterinary Inspection and*  
 12382 *shall contain animal identifiers and health maintenance history such as vaccinations and laboratory*  
 12383 *tests.*

12384 *"Poultry" includes all domestic fowl and game birds raised in captivity.*

12385 *"State Veterinarian" means the veterinarian employed by the Commissioner as provided in*  
 12386 *§ 3.2-5901.*

12387 *"State Veterinarian's representative" means any person who is either: (i) an employee of the*  
 12388 *Department under the direction of the State Veterinarian; or (ii) a veterinarian deputized pursuant to*  
 12389 *§ 3.2-5901.*

12390 *§ 3.2-5901. State Veterinarian and representatives.*

12391 *The Commissioner shall employ and direct a veterinarian who shall be known as the State*  
 12392 *Veterinarian, whose duties shall be to carry out the laws of the Commonwealth and the regulations of*  
 12393 *the Board and the Commissioner. The State Veterinarian and his representatives shall have the power to*  
 12394 *carry into effect all lawful orders given by the Board or the Commissioner.*

12395 *The State Veterinarian may deputize, for a specific period of time, licensed veterinarians,*  
 12396 *veterinarians employed by the Virginia-Maryland Regional College of Veterinary Medicine, and*  
 12397 *veterinarians in the employment of the U.S. Department of Agriculture.*

12398 *§ 3.2-5902. Certificate of veterinary inspection required for importation of certain pet animals;*  
 12399 *examination; exceptions; penalty.*

12400 *A. It shall be unlawful for any person to import into the Commonwealth from another state any pet*  
 12401 *animal, including dogs, cats, monkeys, or other animals, ferae naturae, wild or tame under*  
 12402 *domestication or in custody, or any poultry not intended for commercial use that by its nature is fit for*  
 12403 *use only as a pet, unless such animal is accompanied by a certificate of veterinary inspection issued by*  
 12404 *an accredited veterinarian. Such certificate shall be on an official interstate certificate of veterinary*  
 12405 *inspection issued by the state of origin, shall be dated no more than 10 days before shipment, and shall*  
 12406 *contain such evidence of proof of the health of the animal as the Board, by regulation, may require.*

12407 *B. Any animal imported into the Commonwealth without a certificate may be examined immediately*  
 12408 *by the State Veterinarian, his representative, or a licensed veterinarian designated by him, and the*  
 12409 *examination cost may be charged to the owner or the person in possession of the animal. If, in the*  
 12410 *opinion of the State Veterinarian or his representative, there is danger from contagion or infection, the*  
 12411 *animal may be placed in quarantine at the expense of the owner until all danger of infection or*  
 12412 *contagion has passed, whereupon the animal shall be released upon the order of the State Veterinarian*  
 12413 *or his representative.*

12414 *C. The provisions of this section shall not apply to any ornamental aquarium fish or invertebrate*  
 12415 *animal, or an animal accompanied by a passport approved by the State Veterinarian. The provisions of*  
 12416 *this section shall also not apply to: (i) any animal as herein defined passing directly through the*  
 12417 *Commonwealth to another state in interstate commerce, or when such animal is kept properly under*  
 12418 *control by its owner or custodian when passing through the Commonwealth to another state; (ii) any*  
 12419 *animal brought into the Commonwealth by a resident or by a resident of another state who intends to*  
 12420 *make his residence in the Commonwealth except if brought into the Commonwealth with the intent of*

12421 offering it for public sale, trade, or promotional incentive; or (iii) to any animal brought into the  
 12422 Commonwealth temporarily for the purpose of hunting or legal exhibition within this state.

12423 D. Any person who violates any of the provisions of this section is guilty of a Class 1 misdemeanor.

12424 § 3.2-5903. Laboratory for diagnosis of diseases.

12425 The Commissioner shall maintain and operate a laboratory system for the diagnosis of diseases of  
 12426 livestock and poultry, and for such other uses and purposes as may be determined by the Commissioner.

12427 § 3.2-5904. Authority of the Commissioner; coyotes.

12428 The Commissioner may enter into agreements with local, state and federal agencies, or other persons  
 12429 for the control of coyotes that pose a danger to agricultural animals.

12430 § 3.2-5905. Compensation for animals slaughtered or animals or animal products destroyed to  
 12431 control or eradicate an animal disease outbreak.

12432 When, in the judgment of the State Veterinarian, it is necessary for the control or eradication of an  
 12433 animal disease outbreak to slaughter or destroy animals or destroy animal products affected with or  
 12434 exposed to such disease and when the Commissioner determines that there should be compensation to

12435 owners and, when applicable, individuals contracted by the owners to produce such animals or animal  
 12436 products for loss thereof, the Commissioner, with the approval of the Governor and the Secretary of

12437 Agriculture and Forestry, may, within his discretion, use funds so appropriated to pay to the  
 12438 appropriate persons a portion of the difference between the appraised value of each animal destroyed or

12439 slaughtered or animal product destroyed and the total value of the salvage thereof and any  
 12440 compensation made for each animal or animal product by the federal government.

12441

#### CHAPTER 60.

12442

#### LIVESTOCK AND POULTRY.

12443

##### Article 1.

12444

##### Contagious and Infectious Diseases.

12445

§ 3.2-6000. Right of entry.

12446

The State Veterinarian and his representatives are authorized to enter upon any premises for the  
 12447 purpose of performing the duties imposed upon them by this chapter.

12448

§ 3.2-6001. Protection of livestock and poultry.

12449

The Commissioner, the Board, the State Veterinarian, and all other veterinarians within the  
 12450 Commonwealth shall use their best efforts to protect livestock and poultry from contagious and

12451

infectious disease. It shall also be the duty of the Commissioner, the Board, and the State Veterinarian  
 12452 to cooperate with the livestock and poultry disease control officials of other states and with the U.S.

12453

Department of Agriculture in establishing interstate quarantine lines and regulations so as to best  
 12454 protect the livestock and poultry of the Commonwealth against all contagious and infectious diseases.

12455

§ 3.2-6002. Contagious and infectious diseases; prevention and eradication; presence of biological  
 12456 residues.

12457

A. The State Veterinarian shall take such measures as may be necessary to prevent the spread of and  
 12458 eradicate contagious and infectious livestock and poultry diseases. The Board may adopt regulations as

12459

may be necessary to effectuate the purposes of this article. The Board and the Commissioner are also  
 12460 authorized to make the regulations adopted under this article conform, insofar as practicable, to those

12461

regulations adopted under federal statutes governing animal health.

12462

B. The Commissioner may adopt by reference any federal regulation adopted pursuant to any federal  
 12463 statute relating to animal health, amending it as necessary for intrastate applicability. Any regulation

12464

adopted by the Commissioner pursuant to this subsection shall be effective upon filing with the Registrar  
 12465 of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of

12466

Regulations, or upon a date specified by the Department that is after the filing.

12467

The regulation shall contain a preamble stating that the Board will receive, consider and respond to  
 12468 a petition by any interested person at any time with respect to reconsideration or revision of such

12469

regulation. Neither the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) nor public  
 12470 participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation by the

12471

Commissioner pursuant to this subsection.

12472

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise  
 12473 the regulation adopted by the Commissioner. If, upon reconsideration, the Board determines that the

12474

regulation should be revised other than as authorized by subsection B, the Board may amend the  
 12475 regulation only as authorized by the Administrative Process Act.

12476

D. The Commissioner and the Board may use the powers granted by this article to abate the  
 12477 presence of biological residues in or on livestock or poultry. Biological residues shall mean those

12478

substances remaining in or on any animal prior to or at the time of slaughter as the result of treatment  
 12479 or exposure that are determined by the Commissioner and the Board to be or to have the potential for

12480

being injurious to the health of humans or animals.

12481

§ 3.2-6003. Duty of State Veterinarian when animals are suspected of having a contagious or

12482 *infectious disease.*

12483 *A. The State Veterinarian, upon receipt of reliable information of the existence of any contagious or*  
 12484 *infectious disease among animals of the Commonwealth with potential impact on livestock or poultry,*  
 12485 *shall immediately make an evaluation that may include going to the place where such disease has been*  
 12486 *reported. The evaluation may include conducting tests of the animals believed to be affected with such*  
 12487 *disease, and ascertain, if possible, what, if any, disease exists, and whether the same is contagious or*  
 12488 *infectious.*

12489 *B. Upon notice by the State Veterinarian or his representative, the owner or custodian of any animal*  
 12490 *to be evaluated shall isolate and confine the animal if necessary to accomplish the evaluation or to*  
 12491 *prevent the spread of contagious or infectious disease.*

12492 *C. 1. If a disease is found to be contagious or infectious, the State Veterinarian, or his*  
 12493 *representative, may adopt and enforce quarantine lines and regulations and shall enforce such cleaning*  
 12494 *and disinfection as may be deemed necessary to prevent the spread of such disease. Quarantine lines*  
 12495 *and regulations, when adopted, shall supersede any similar provisions made by the governing body of*  
 12496 *any county under the provisions of Chapter 12 (§ 15.2-1200 et seq.) of Title 15.2.*

12497 *2. The State Veterinarian may issue and enforce a proclamation limiting live animal sales and events*  
 12498 *or the movement of manure, bedding, equipment, vehicles, or other material that may be infectious to*  
 12499 *prevent the spread of contagious or infectious diseases to livestock and poultry.*

12500 *§ 3.2-6004. Regulation for the separation and caring for diseased animals.*

12501 *The Board may adopt regulations and the State Veterinarian may give and enforce directions and*  
 12502 *orders as to separating, feeding, and caring for diseased or exposed animals as necessary to prevent the*  
 12503 *animals affected with disease, or capable of communicating disease, from coming in contact with*  
 12504 *livestock or poultry not so affected.*

12505 *§ 3.2-6005. Notice of quarantine.*

12506 *The State Veterinarian, or his representative, may give such notice as may be necessary to make a*  
 12507 *quarantine effective.*

12508 *§ 3.2-6006. Quarantine of individuals.*

12509 *Any individual exposed to contagious or infectious animal diseases that, in the reasonable opinion of*  
 12510 *the State Veterinarian, may be transmitted by such individual to animals, may be quarantined when, in*  
 12511 *the reasonable opinion of the State Veterinarian, such quarantine will prevent the spread of such*  
 12512 *contagious or infectious diseases among livestock or poultry. The provisions of § 32.1-48.010 shall*  
 12513 *apply, mutatis mutandis, to appeal any order of quarantine issued pursuant to this section. For purposes*  
 12514 *of this section only, significant health threat shall include threat of contagious or infectious diseases to*  
 12515 *livestock or poultry.*

12516 *§ 3.2-6007. Domestic animals not permitted to enter or leave quarantine.*

12517 *Any domestic animal with any contagious or infectious disease, any domestic animal exposed to such*  
 12518 *a disease, or any domestic animal that is otherwise capable of communicating such a disease to*  
 12519 *livestock or poultry shall not be permitted to enter or leave any quarantined district, premises, or*  
 12520 *grounds, except by authority of the State Veterinarian.*

12521 *§ 3.2-6008. Disposition of quarantined animals with potential to impact livestock or poultry.*

12522 *Disposition of quarantined animals, including condemnation, shall be determined by the State*  
 12523 *Veterinarian or his representative after confirmation by diagnostic testing, the results of which shall be*  
 12524 *provided to the owner and grower of such animal upon request.*

12525 *§ 3.2-6009. Euthanasia or slaughter of livestock or poultry by owner.*

12526 *A. The State Veterinarian may require the owner or custodian to euthanize or slaughter condemned*  
 12527 *livestock or poultry within a specified period of time, and under state or federal supervision, or under*  
 12528 *regulations of the Board. The carcasses shall be disposed of pursuant to regulations adopted by the*  
 12529 *Board.*

12530 *B. If the owner or custodian fails to euthanize or slaughter any condemned livestock or poultry*  
 12531 *pursuant to subsection A, then the State Veterinarian or his representative may seize the condemned*  
 12532 *livestock or poultry and euthanize or slaughter the animals as required.*

12533 *§ 3.2-6010. Proclamation prohibiting animal importation; required tests.*

12534 *A. When the Commissioner or the State Veterinarian shall have a reasonable belief of the existence*  
 12535 *of contagious or infectious diseases of animals in localities in other states, territories, or countries, or*  
 12536 *that conditions exist that, in the judgment of the Commissioner or of the State Veterinarian, render the*  
 12537 *importation of animals from such localities a menace to the health of the livestock or poultry of the*  
 12538 *Commonwealth, the Commissioner or the State Veterinarian shall, by proclamation, prohibit the*  
 12539 *importation of any or all kinds of animals from any locality of other states, territories or countries, into*  
 12540 *the Commonwealth, except pursuant to subsection B.*

12541 *B. The Commissioner or the State Veterinarian may require documentation of negative laboratory*  
 12542 *test results using a test specified by the State Veterinarian within a specific time period prior to an*  
 12543 *animal, embryo, hatching egg, or semen entering the Commonwealth. Expenses associated with meeting*

12544 entry requirements shall be borne by the owner of the animal.

12545 § 3.2-6011. Bringing animals infected with disease into the Commonwealth, or in violation of order  
12546 or regulation; disinfecting transport vehicles.

12547 It shall be unlawful for any person to: (i) transport from outside the Commonwealth into the  
12548 Commonwealth any animal, knowing the same to be infected with a contagious or infectious disease, or  
12549 any animal known by the importer to have been exposed to a contagious or infectious disease, or known  
12550 to bear upon its body ticks or other disease vectors or known to be a carrier of contagious or infectious  
12551 disease; (ii) import any animal in violation of any legally adopted quarantine or other order or  
12552 regulation adopted under this article; or (iii) violate any order or regulation adopted under this article  
12553 to clean and disinfect vehicles used by them for transporting animals into or through the  
12554 Commonwealth, as may be reasonably necessary to prevent the spread of contagious and infectious  
12555 diseases of animals within the Commonwealth.

12556 § 3.2-6012. Duty of operators of stockyards and poultry slaughter facilities.

12557 Any person who operates a stockyard, poultry slaughter facility, or any other premises where  
12558 livestock or poultry are repeatedly assembled: (i) shall maintain such premises in a sanitary condition  
12559 as directed by the State Veterinarian; (ii) shall obey all orders or regulations adopted pursuant to this  
12560 chapter as to handling livestock or poultry that may be affected with contagious or infectious disease, or  
12561 that have been exposed to contagious or infectious disease; and (iii) shall clean and disinfect such  
12562 premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the  
12563 State Veterinarian or his representative.

12564 § 3.2-6013. Duty of officers to execute orders of the Commissioner, Board, or State Veterinarian.

12565 The Commissioner, the Board, or the State Veterinarian shall have power to call upon any  
12566 law-enforcement officer, as defined in § 9.1-101, to execute their orders. Such officers shall obey the  
12567 orders of the Commissioner, the Board, or the State Veterinarian.

12568 § 3.2-6014. Circuit court judges may enforce orders of Commissioner, Board, or State Veterinarian.

12569 Upon petition by the Commissioner, the Board, or the State Veterinarian, a circuit court judge may  
12570 issue orders as are necessary to enforce the orders of the Commissioner, the Board, or State  
12571 Veterinarian.

12572 § 3.2-6015. Cooperation with U.S. Department of Agriculture to prevent contagious or infectious  
12573 diseases.

12574 The Governor is authorized to accept, on behalf of the state, the rules and regulations prepared by  
12575 the U.S. Department of Agriculture under and in pursuance of section three of an act of Congress  
12576 approved May 29, 1884, entitled "An act for the establishment of a bureau of animal industry, to  
12577 prevent the exportation of diseased cattle and to provide means for the suppression and extirpation of  
12578 pleuropneumonia and other contagious diseases among domestic animals," and to cooperate with the  
12579 authorities of the United States in the enforcement of the provisions of the act.

12580 The inspectors of the U.S. Department of Agriculture shall have the right of inspection, quarantine,  
12581 and condemnation of animals affected with any contagious or infectious diseases, or suspected to be so  
12582 affected, or that have been exposed to any such disease, and for these purposes are authorized and  
12583 empowered to enter upon any ground or premises. Such inspectors shall have the power to call on  
12584 sheriffs and peace officers to assist them in the discharge of their duties in carrying out the provisions  
12585 of the act of Congress aforesaid, and it is made the duty of sheriffs and peace officers to assist such  
12586 inspectors when so requested, and such inspectors shall have the same powers and protection as peace  
12587 officers while engaged in the discharge of their duties.

12588 All expenses of quarantine, condemnation of animals exposed to disease, and the expenses of any  
12589 and all measures that may be used to suppress and extirpate pleuropneumonia shall be paid by the  
12590 United States, and in no case shall the Commonwealth be liable for any damages or expenses of any  
12591 kind under the provisions of this section.

12592 § 3.2-6016. Altering disease control identification of livestock or poultry.

12593 It shall be unlawful for any person to, unless in accordance with regulations adopted pursuant to  
12594 this article, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent,  
12595 or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any  
12596 county, the Commissioner, the Board, the U.S. Department of Agriculture, or any other state for the  
12597 identification of any animal in the Commonwealth or shipped into the Commonwealth for the purpose of  
12598 controlling or eradicating disease.

12599 § 3.2-6017. Unlawful to possess anthrax or non-inactivated classical swine fever virus without  
12600 permission; report; testing of biologicals for use in livestock or poultry; rules for biologicals.

12601 A. No person shall buy, sell or have in possession, or administer to livestock, or permit any other to  
12602 administer to livestock, any product or biological preparation, commonly called vaccine, containing  
12603 anthrax killed, live, or as a spore, or non-inactivated classical swine fever virus, without permission in  
12604 writing from the State Veterinarian for each such purchase, sale, or administration. Any person

12605 permitted to administer any such product or biological preparation shall remit to the State Veterinarian  
 12606 a report within 10 days of such administration showing the kind, the amount, and the make or brand of  
 12607 the vaccine or virus used, when and from whom purchased, where, when, and by whom administered,  
 12608 including all persons assisting in the administration, together with a description of all animals to which  
 12609 administered, including the breed, age, and sex of each animal.

12610 B. The State Veterinarian is authorized to examine and test any biological, commonly called vaccine,  
 12611 intended for use in livestock or poultry to determine if it is safe, pure, potent, or effective. The Board is  
 12612 authorized to adopt regulations providing for the limitation, prohibition, or use of any biological  
 12613 intended for use in livestock or poultry.

12614 § 3.2-6018. Penalty.

12615 Any person who: (i) fails to comply with any of the provisions of Articles 1 through 3 of this  
 12616 chapter; (ii) fails to allow the State Veterinarian or his representative to do or to perform any duty  
 12617 required of him pursuant to Articles 1 through 3 of this chapter; or (iii) violates any of the regulations  
 12618 adopted or quarantines established under Articles 1 through 3 of this chapter is guilty of a Class 1  
 12619 misdemeanor.

12620 § 3.2-6019. Liability for damages.

12621 Any person who knowingly disregards, violates, or evades any provision of any section of this  
 12622 article, or of Article 2 (§ 3.2-6024 et seq.), or any regulation or order of the Commissioner, Board,  
 12623 State Veterinarian, or his representative, shall, in addition to the punishment otherwise provided for, or  
 12624 any other remedy, be liable to the owner thereof, for any damages to his livestock or poultry,  
 12625 occasioned by such disregarding, violating, or evading of any of such provisions, regulations, or orders.

12626 § 3.2-6020. Appraisal of condemned cattle.

12627 All condemned cattle shall be appraised at their fair cash value by three persons, one of whom shall  
 12628 be appointed by the Board or State Veterinarian or his representative, one by the owner, and the third  
 12629 by the two thus selected. Their appraisal shall be made in writing and shall be returned to the  
 12630 Board.

12631 § 3.2-6021. Additional compensation to owners of euthanized or slaughtered animals; liability of  
 12632 purchaser of condemned animal.

12633 In addition to the amount received for the carcasses of animals euthanized or slaughtered, further  
 12634 compensation may be paid to the owners by the Department out of funds appropriated for that purpose  
 12635 at a rate not exceeding that set forth by the U.S. Department of Agriculture, provided that the total  
 12636 amount received by the owner shall not exceed the appraised value of such animal or animals less the  
 12637 amount received for slaughter.

12638 Whenever the owner selling an animal that has been condemned is unable to obtain compensation  
 12639 out of state and federal appropriations because of the failure of the purchaser to furnish the seller with  
 12640 such proof of slaughter as may be required, the purchaser shall, in addition to the agreed purchase  
 12641 price, be liable to the seller for the amounts he would otherwise receive out of state and federal  
 12642 appropriations.

12643 § 3.2-6022. Indemnity to owner for the euthanasia or slaughter of swine.

12644 At such time as the Commonwealth is approved for and becomes eligible to participate in and  
 12645 receive funds from the U.S. Department of Agriculture pursuant to United States Public Law 87-209; 75  
 12646 Stat. 481 (21 U.S.C.A. 111-113 et seq.), the Commissioner may obtain an appraisal of the fair market  
 12647 value of any swine destroyed pursuant to this article and indemnify the owner thereof for the value of  
 12648 such swine destroyed in an amount equal to the indemnity paid by the U.S. Department of Agriculture,  
 12649 and in no event shall the total indemnity paid by the Commissioner and the U.S. Department of  
 12650 Agriculture exceed the appraised value of such swine. In cases where salvage is received by the owner  
 12651 of the swine, the amount of salvage shall be deducted from the appraised value of the swine in  
 12652 computing the amount of State indemnity.

12653 § 3.2-6023. Prevention and control measures; penalty.

12654 A. The Commissioner may adopt regulations to prevent and control avian influenza in the live-bird  
 12655 marketing system and is authorized to participate in the federal Live Bird Marketing Program of the  
 12656 U.S. Department of Agriculture, as it may be amended from time to time. In adopting such regulations,  
 12657 the Commissioner shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) and from  
 12658 public participation guidelines adopted pursuant thereto. The State Veterinarian and his representatives  
 12659 are authorized and empowered to enter the premises of any entity within the live-bird marketing system  
 12660 to carry out the provisions of any regulations adopted pursuant to this section. Any regulations adopted  
 12661 pursuant to this section shall, unless a later effective date is specified, take effect upon filing with the  
 12662 Registrar of Regulations, who shall publish the regulations as final regulations in the Virginia Register  
 12663 of Regulations, except that no requirement authorized by subsection B that a person be registered or  
 12664 licensed may take effect any sooner than 90 days after the promulgation date of the regulations  
 12665 containing such requirement, the promulgation date being the date of publication in the Virginia  
 12666 Register of Regulations of the final regulations containing such requirement. The regulations shall

12667 contain a preamble stating that the Board will receive, consider, and respond to petitions by any  
12668 interested person at any time with respect to reconsideration or revision of such regulations.

12669 B. The Commissioner shall establish by regulation a registration or licensing system to regulate the  
12670 live-bird marketing system in Virginia. As a part of such registration or licensing system, the  
12671 Commissioner shall register or license all persons who participate in any component of the live-bird  
12672 marketing system. Such registration or licensing system may include the granting, denial, suspension, or  
12673 revocation of any registration or license, including governing: (i) the grounds for granting such  
12674 registration or license; and (ii) the grounds for the denial, suspension, or revocation of such registration  
12675 or license.

12676 C. Any person violating any regulation adopted pursuant to this section may be assessed a civil  
12677 penalty by the Commissioner in an amount not to exceed \$2,500 per day per violation. In determining  
12678 the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the history of the  
12679 person's previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith  
12680 of the person charged in attempting to achieve compliance with the regulation after notification of the  
12681 violation. Civil penalties assessed under this section shall be paid into a special fund in the state  
12682 treasury to the credit of the Department to be used in carrying out the purposes of this section or any  
12683 regulations adopted hereunder. The Commissioner shall prescribe procedures for payment of  
12684 uncontested penalties. The procedure shall include provisions for a person to consent to abatement of  
12685 the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of  
12686 civil liability arising from such alleged violation. Final orders may be recorded, enforced, and satisfied  
12687 as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such  
12688 orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000  
12689 et seq.).

12690 D. For the purposes of this section: (i) "live-bird marketing system" includes live-bird markets and  
12691 the production and distribution units that supply live-bird markets with birds; (ii) "live-bird markets"  
12692 includes any facility that receives live poultry to be resold or slaughtered and sold onsite, not including  
12693 any producer or grower that prior to the sale of his own birds slaughters or processes them onsite or at  
12694 an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his  
12695 premises and is not a "production unit" or "distribution unit" as defined herein; (iii) "production unit"  
12696 includes a production facility or farm that is the origin of or participates in the production of poultry  
12697 offered for sale in a live-bird market; and (iv) "distribution unit" includes a person or business such as  
12698 a wholesaler, dealer, hauler, and auction market engaged in the transportation or sale of poultry within  
12699 the live-bird market system.

## Article 2.

### Disposal of Dead Poultry.

12700 § 3.2-6024. Definitions.

12701 As used in this article unless the context requires a different meaning:

12702 "Composting" means the natural process in which beneficial microbes reduce dead poultry into a  
12703 biologically safe by-product.

12704 "Dead poultry" means poultry, exclusive of those intentionally slaughtered, that die as a result of  
12705 disease, injury, or of natural causes, upon any premises in the Commonwealth.

12706 "Disposal" means to put dead poultry into a landfill or the complete destruction of dead poultry in  
12707 an incinerator or a disposal pit, or by rendering or composting.

12708 "Disposal pit" means an opening dug in the ground to a minimum depth of six feet, containing a  
12709 minimum capacity of 150 cubic feet, covered with a minimum of 12 inches of dirt, and provided with  
12710 one or more openings for the introduction of poultry therein. Openings shall be of a minimum size of  
12711 eight inches square and equipped with tight lids.

12712 "Incinerator" means a device designed for treatment of waste by combustion.

12713 "Landfill" means an area permitted by the Department of Environmental Quality allowing the  
12714 disposal of dead poultry.

12715 "Person" means any person who engages in the raising or keeping of poultry for profit in the  
12716 Commonwealth.

12717 "Poultry" means all chickens, ducks, turkeys, or other domestic fowls being raised or kept on any  
12718 premises in the Commonwealth for profit.

12719 "Premises" means the entire tract of land including the buildings thereon, owned, leased, or used by  
12720 any person for the raising or keeping of poultry for profit.

12721 "Raising or keeping of poultry for profit" means the raising or keeping of 500 or more poultry at  
12722 one time for the purpose of sale of such poultry or the eggs produced therefrom.

12723 "Rendering" means treating dead poultry according to the process described in 9 CFR § 82.1.

12724 § 3.2-6025. Proper disposal of dead poultry required of any person raising or keeping poultry for  
12725 profit.

12728 *It shall be unlawful for any person to engage in the raising or keeping of poultry for profit on any*  
 12729 *premises, or to enter into a contract to raise or keep poultry for profit for another person, without*  
 12730 *providing for the disposal of dead poultry using either: (i) a disposal pit; (ii) a landfill; (iii)*  
 12731 *incineration; (iv) composting; or (v) rendering.*

12732 § 3.2-6026. *Disposal of dead poultry.*

12733 *It shall be unlawful for any person engaged in the raising or keeping of poultry for profit to dispose*  
 12734 *of dead poultry on his premises in any manner except in a disposal pit, landfill, incinerator, or by*  
 12735 *composting or rendering.*

12736 § 3.2-6027. *Transportation of dead poultry.*

12737 *The State Veterinarian may specify requirements governing the transportation of dead poultry.*

12738 § 3.2-6028. *Exemptions from provisions of article.*

12739 *The State Veterinarian may authorize disposal of dead poultry by a method other than as provided in*  
 12740 *§ 3.2-6025 or 3.2-6026 if he determines that the alternative method meets standards for disposal of dead*  
 12741 *poultry.*

12742 § 3.2-6029. *Regulations.*

12743 *The Board is authorized to adopt regulations concerning the specifications of disposal pits,*  
 12744 *incinerators, composting and rendering and all other matters within the purview and scope of this*  
 12745 *article to carry out the provisions of this article.*

12746 § 3.2-6030. *Applicability.*

12747 *Nothing in this article shall apply to the disposal of entire flocks of dead poultry governed by*  
 12748 *regulations adopted pursuant to § 3.2-6002.*

12749 *Article 3.*

12750 *Prohibitions on Feeding Garbage to Swine.*

12751 § 3.2-6031. *Definitions.*

12752 *As used in this article, unless the context requires a different meaning:*

12753 *"Garbage" means animal and vegetable wastes resulting from the handling, preparation, cooking,*  
 12754 *and consumption of foods containing animal carcasses or parts thereof. The Commissioner may in his*  
 12755 *discretion exclude from this definition such wastes that have been heat treated to the extent that the*  
 12756 *resultant material is of a uniform consistency, contains by analysis not more than 10 percent moisture,*  
 12757 *and that he has determined to be nonputrescible. Such treated nonputrescible wastes shall be*  
 12758 *"commercial feed" as the term is defined in § 3.2-4800, and shall be subject to the provisions of*  
 12759 *Chapter 48 (§ 3.2-4800 et seq.).*

12760 § 3.2-6032. *Unlawful to feed garbage to swine.*

12761 *No person shall feed or knowingly allow any other person to feed any garbage to swine on his*  
 12762 *premises or any premises over which he has any control.*

12763 § 3.2-6033. *Ordinances prohibiting feeding of certain putrescible wastes.*

12764 *The governing body of any locality may by ordinance prohibit the feeding to swine within its*  
 12765 *jurisdiction of putrescible wastes resulting from the handling, preparation, cooking, and consumption of*  
 12766 *foods that do not contain animal carcasses or parts thereof.*

12767 § 3.2-6034. *Violations.*

12768 *Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Each day*  
 12769 *upon which such violation occurs is a separate offense. In addition to the penalties herein provided,*  
 12770 *such person may be enjoined from continuing such violation.*

12771 *Article 4.*

12772 *Shooting Enclosures.*

12773 § 3.2-6035. *Definitions.*

12774 *As used in this article, unless the context requires a different meaning:*

12775 *"Shooting enclosure" or "enclosure" means any fenced area open commercially to the public or any*  
 12776 *private facility where animals are held for the purpose of being shot.*

12777 *"Wildlife" means any native or exotic wild animal or bird.*

12778 § 3.2-6036. *Department may issue, deny, and revoke licenses.*

12779 *A. The Department shall issue a license for shooting enclosures only to those enclosures that were in*  
 12780 *operation on or before January 1, 1995. These enclosures shall hold only those animals described in*  
 12781 *§ 3.2-6040 and as specified in regulations. The Department shall issue a license to a shooting enclosure*  
 12782 *only if it meets the requirements of this article and regulations adopted hereunder. No person shall*  
 12783 *operate an enclosure unless he has obtained a license from the Department.*

12784 *B. The Department may deny, suspend, or revoke a license if the applicant for a license or a*  
 12785 *licensee, violates, or is otherwise not in compliance with this article or the regulations adopted pursuant*  
 12786 *thereto.*

12787 *C. Before a shooting enclosure is licensed and throughout the duration of the license, the*  
 12788 *Department shall inspect the shooting enclosure to ensure compliance with this article or the regulations*  
 12789 *adopted pursuant thereto.*



12790 *D. The State Veterinarian is authorized to seize and dispose of any livestock, as described in*  
 12791 *§ 3.2-6040, found in shooting enclosures that are not licensed under this article.*

12792 *E. Any person convicted of operating an unlicensed shooting enclosure shall pay all reasonable costs*  
 12793 *incurred by the Department in the seizure and disposal of any confiscated livestock.*

12794 *F. It is unlawful for any person to knowingly provide livestock, as described in § 3.2-6040, to an*  
 12795 *unlicensed shooting enclosure.*

12796 *§ 3.2-6037. Grounds for denial, suspension, or revocation of license.*

12797 *The Department may deny, suspend, or revoke a license to operate a shooting enclosure, if the:*

12798 *1. Applicant for a license does not own or lease the land that will be used for the shooting*  
 12799 *enclosure;*

12800 *2. Applicant for a license does not meet local zoning and land-use requirements;*

12801 *3. Operation of the shooting enclosure poses a threat to the health of humans, wildlife, or livestock;*

12802 *4. Operation of the enclosure poses a threat of harm to: (i) wildlife species, whether native or*  
 12803 *naturalized; (ii) agricultural practices; or (iii) livestock;*

12804 *5. Shooting enclosure is constructed or maintained in such a way that animals being held may*  
 12805 *escape; or*

12806 *6. Applicant for a license or the licensee fails to meet any requirement of this article or regulations*  
 12807 *adopted pursuant thereto.*

12808 *§ 3.2-6038. Application and license fees; other costs.*

12809 *A. Any person seeking to obtain a license to operate a shooting enclosure shall pay to the*  
 12810 *Department a one-time nonrefundable application fee to be established by the Department in an amount*  
 12811 *sufficient to cover the cost of reviewing the application. The revenue generated by the fee shall be used*  
 12812 *to defray the costs of reviewing the application for a license. Upon approval of the application for a*  
 12813 *license, the applicant shall pay to the Department an annual license fee to be established by the*  
 12814 *Department in an amount sufficient to cover the costs of regulating the operation of such enclosures.*  
 12815 *Except in instances in which licenses are denied, suspended, or revoked, all licenses shall expire on*  
 12816 *June 30 of each year. License fees collected by the Department shall be used to carry out its*  
 12817 *responsibilities to regulate the operation of shooting enclosures.*

12818 *B. The Department may recover from the licensee the actual costs incurred by the Department for:*  
 12819 *(i) investigating the conditions of, examining, or disposing of animals pursuant to this article; and (ii)*  
 12820 *apprehending animals that escape from a shooting enclosure.*

12821 *§ 3.2-6039. Board to adopt regulations.*

12822 *A. The Board shall adopt regulations to carry out the provisions of this article including the*  
 12823 *requirements for licensing and operating shooting enclosures located within the Commonwealth. In*  
 12824 *addition, the Board may adopt regulations governing the veterinary care to be provided to animals held*  
 12825 *in shooting enclosures.*

12826 *B. In adopting such regulations, the Board shall establish criteria for the following:*

12827 *1. Specific species of goats, sheep, and hogs that may be held;*

12828 *2. Minimum contiguous acreage necessary;*

12829 *3. Humane care and humane killing of animals being held;*

12830 *4. Methods and procedures for disposal of animals;*

12831 *5. Reporting the death of every animal being held in the shooting enclosure not killed by the*  
 12832 *clientele; and*

12833 *6. Ensuring the reasonable utilization of all animals killed by the clientele.*

12834 *§ 3.2-6040. Limitation on animals to be held.*

12835 *In no instance shall any animals other than goats of the genus Capri, sheep of the genera*  
 12836 *Ammotragus and Ovis, and hogs of the genus Sus, be held in enclosures. The Board shall delineate the*  
 12837 *specific species of goats, sheep, and hogs that shall be allowed to be held in an enclosure. The*  
 12838 *importation, possession, and shooting of these animals shall be in accordance with state and federal*  
 12839 *laws and regulations.*

12840 *§ 3.2-6041. Exemption from article.*

12841 *Nothing in this article or any regulation adopted hereunder shall apply to shooting preserves*  
 12842 *licensed under Chapter 6 (§ 29.1-600 et seq.) of Title 29.1.*

12843 *§ 3.2-6042. Penalty.*

12844 *Any person who violates any provision of this article or a regulation adopted hereunder is guilty of*  
 12845 *a Class 1 misdemeanor.*

#### CHAPTER 61.

#### CATTLE BRANDING AND REGISTRATION.

12848 *§ 3.2-6100. Definitions.*

12849 *As used in this chapter, unless the context requires a different meaning:*

12850 *"Brand" means any recorded identification mark applied to any position on the hide of a live animal*

- 12851 *by means of heat, freezing, acid or chemical, except tattoo marks in the ear or numbers used to keep*  
12852 *production records, record of age or identification marks used by any governmental agency.*
- 12853 *"Livestock market" means a place where a person assembles livestock for public sale if such person*  
12854 *is required to procure a license or permit from the Department to operate such market.*
- 12855 *§ 3.2-6101. Authority to adopt regulations.*
- 12856 *The Commissioner, with the approval of the Board, may adopt regulations reasonably necessary to*  
12857 *carry out the intent and purposes of this chapter and that facilitate the tracing and identification of*  
12858 *cattle and afford protection against stealing and unlawful dealing in cattle.*
- 12859 *§ 3.2-6102. Registration of brand required; transfer of brand.*
- 12860 *Any cattle owner who uses a brand to identify his cattle must register his brand by applying to the*  
12861 *Department for such registration. The application shall be made on forms prescribed and furnished by*  
12862 *the Department, which application shall be accompanied by a fee of \$10 and a facsimile of the brand to*  
12863 *be registered shall also be furnished by the applicant. All fees collected hereunder for registration,*  
12864 *transfer, and reregistration of brands shall be deposited in a special fund of the state treasury for the*  
12865 *administration of this chapter. If the brand described in the application, or one similar, or closely*  
12866 *resembling a registered brand has not been previously registered by another cattle owner, the*  
12867 *Department shall approve the application, register the brand in the name of the applicant and issue to*  
12868 *the applicant a certificate of registration. In the event the Department denies registration of a brand for*  
12869 *any reason the registration fee of \$10 shall be returned to the person making application for*  
12870 *registration. When a cattle owner, who has registered a brand with the Department, transfers such*  
12871 *brand to another, he shall immediately notify the Department of the transfer, giving the date of transfer,*  
12872 *and the name of the transferee. Upon receipt of the notice and a transfer fee of \$3, the Department*  
12873 *shall note such transfer in the register of brands, and such brand shall not be used by the new owner*  
12874 *until permission has been given by the Department.*
- 12875 *§ 3.2-6103. Renewal of brand.*
- 12876 *There shall be a renewal period for recording brands that shall be once every five years. At least 90*  
12877 *days prior to the renewal date for a brand, the Department shall notify all persons having a registered*  
12878 *brand of the date on which such brands must be renewed. On or before the renewal date the registered*  
12879 *owner of a brand shall pay to the Department a renewal fee of \$10 per registered brand and shall*  
12880 *furnish any additional information the Department may require on forms to be furnished by the*  
12881 *Department. If any cattle owner fails to renew any brand registered in his name, such brand shall be*  
12882 *forfeited and shall be available to any other applicant.*
- 12883 *§ 3.2-6104. Forms.*
- 12884 *The Department shall prescribe and furnish forms on which applications for registration, renewal*  
12885 *and transfer of brands shall be made.*
- 12886 *§ 3.2-6105. Register of brands.*
- 12887 *The Department shall maintain a complete register of all brands, showing the name and address of*  
12888 *the owner, and shall annually publish and distribute copies of this register as prescribed in the*  
12889 *regulations adopted pursuant to this chapter.*
- 12890 *§ 3.2-6106. Livestock market to keep copy of register and records on cattle sold.*
- 12891 *Each operator of a livestock market where cattle are sold shall: (i) keep a copy of the register of*  
12892 *brands in his place of business where it will be easily accessible for public inspection; and (ii) keep a*  
12893 *record, for at least two years, of all cattle received and the name and address of the owner.*
- 12894 *§ 3.2-6107. Brand registration as evidence of ownership.*
- 12895 *In all suits at law or in equity, or in any criminal proceedings when the title or right of possession*  
12896 *is involved, a copy of the certificate of brand registration verified by affidavit of the Commissioner shall*  
12897 *be received in evidence by the court as evidence of the registration of such brand in accordance with*  
12898 *the requirements of this chapter.*
- 12899 *§ 3.2-6108. Prohibited acts.*
- 12900 *It shall be unlawful for:*
- 12901 *1. Any person to use any brand for branding cattle unless the brand is registered with the*  
12902 *Department;*
- 12903 *2. Any person to obliterate, alter or deface the brand of any animals;*
- 12904 *3. Any livestock market to receive and sell cattle unless records of such sale are kept in accordance*  
12905 *with the requirements of this chapter; or*
- 12906 *4. Any livestock market to fail to post a copy of the register of brands furnished to them by the*  
12907 *Department in a place easily accessible to interested parties.*
- 12908 *§ 3.2-6109. Penalties.*
- 12909 *Any person who violates any of the provisions of this chapter is guilty of a Class 1 misdemeanor. All*  
12910 *amounts paid as fines for violations of this chapter, when collected by the proper authority, shall be*  
12911 *transmitted to the Department and deposited in the state treasury.*
- 12912

## EQUINE ACTIVITY LIABILITY.

12913

§ 3.2-6200. Definitions.

12914

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

12915

12916

"Engages in an equine activity" means: (i) any person, whether mounted or unmounted, who rides, handles, trains, drives, assists in providing medical or therapeutic treatment of, or is a passenger upon an equine; (ii) any person who participates in an equine activity but does not necessarily ride, handle, train, drive, or ride as a passenger upon an equine; (iii) any person visiting, touring or utilizing an equine facility as part of an event or activity; or (iv) any person who assists a participant or equine activity sponsor or management in an equine activity. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to an equine or equine activity.

12923

"Equine" means a horse, pony, mule, donkey, or hinny.

12924

12925

"Equine activity" means: (i) equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, endurance trail riding and western games, and hunting; (ii) equine training or teaching activities; (iii) boarding equines; (iv) riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; (v) rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; (vi) conducting general hoofcare, including placing or replacing horseshoes or hoof trimming of an equine; and (vii) providing or assisting in breeding or therapeutic veterinary treatment.

12935

"Equine activity sponsor" means any person or his agent who, for profit or not for profit, sponsors, organizes, or provides the facilities for an equine activity, including pony clubs, 4-H clubs, hunt clubs, riding clubs, school- and college-sponsored classes and programs, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including stables, clubhouses, ponyride strings, fairs, and arenas where the activity is held.

12940

"Equine professional" means a person or his agent engaged for compensation in: (i) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon an equine; or (ii) renting equipment or tack to a participant.

12941

12942

12943

"Intrinsic dangers of equine activities" means those dangers or conditions that are an integral part of equine activities, including: (i) the propensity of equines to behave in ways that may result in injury, harm, or death to persons on or around them; (ii) the unpredictability of an equine's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals; (iii) certain hazards such as surface and subsurface conditions; (iv) collisions with other animals or objects; and (v) the potential of a participant acting in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the equine or not acting within the participant's ability.

12949

"Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

12950

§ 3.2-6201. Horse racing excluded.

12951

The provisions of this chapter shall not apply to horse racing, as that term is defined by § 59.1-365.

12952

§ 3.2-6202. Liability limited; liability actions prohibited.

12953

A. Except as provided in § 3.2-6203, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation, partnership, or limited liability company, shall not be liable for an injury to or death of a participant resulting from the intrinsic dangers of equine activities and, except as provided in § 3.2-6203, no participant nor any participant's parent, guardian, or representative shall have or make any claim against or recover from any equine activity sponsor, equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the intrinsic dangers of equine activities.

12963

B. Except as provided in § 3.2-6203, no participant or parent or guardian of a participant who has knowingly executed a waiver of his rights to sue or agrees to assume all risks specifically enumerated under this subsection may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity. The waiver shall give notice to the participant of the intrinsic dangers of equine activities. The waiver shall remain valid unless expressly revoked in writing by the participant or parent or guardian of a minor.

12969

§ 3.2-6203. Liability of equine activity sponsors, equine professionals.

12970

No provision of this chapter shall prevent or limit the liability of an equine activity sponsor or equine professional or any other person who:

12971

1. Intentionally injures the participant;

12972

12973

- 12974 2. Commits an act or omission that constitutes negligence for the safety of the participant and such
- 12975 act or omission caused the injury, unless such participant, parent or guardian has expressly assumed
- 12976 the risk causing the injury in accordance with subsection B of § 3.2-6202; or
- 12977 3. Knowingly provides faulty equipment or tack and such equipment or tack was faulty to the extent
- 12978 that it did cause the injury or death of the participant.

CHAPTER 63.  
OX ACTIVITY LIABILITY.

12981 § 3.2-6300. Definitions.

12982 As used in this chapter, unless the context requires a different meaning:

12983 "Directly engages in an ox activity" means a person who rides, trains, drives, leads, or is a

12984 passenger upon an ox, whether mounted or unmounted, or on an ox drawn vehicle, but does not mean a

12985 spectator at an ox activity or a person who participates in the ox activity but does not ride, train, drive,

12986 lead, or ride as a passenger upon an ox or ox drawn vehicle.

12987 "Ox" means a castrated bovine used for draft, recreational, educational, entertainment or display

12988 purposes and shall not include bovines raised primarily for food or fiber.

12989 "Ox activity" means: (i) ox shows, fairs, competitions, rodeos, pulling, driving, performances, or

12990 parades; (ii) ox training or teaching activities; (iii) boarding oxen; (iv) riding, inspecting, or evaluating

12991 an ox belonging to another whether or not the owner has received some monetary consideration or

12992 other thing of value for the use of the ox or is permitting a prospective purchaser of the ox to ride,

12993 inspect, or evaluate the ox; and (v) rides, trips or other ox activities of any type however informal or

12994 impromptu that are sponsored by an ox activity sponsor.

12995 "Ox activity sponsor" means any person or his agent who, for profit or not for profit, sponsors,

12996 organizes, or provides the facilities for an ox activity, including 4-H clubs, riding clubs,

12997 school-sponsored and college-sponsored classes and programs, therapeutic riding programs, and

12998 operators, instructors, and promoters of ox facilities, including stables, fairs, and arenas where the

12999 activity is held.

13000 "Ox professional" means a person or his agent engaged for compensation in: (i) instructing a

13001 participant or renting to a participant an ox for the purpose of riding, driving, or being a passenger

13002 upon an ox; or (ii) renting equipment or tack to a participant.

13003 "Participant" means any person, whether amateur or professional, who directly engages in an ox

13004 activity, whether or not a fee is paid to participate in the ox activity.

13005 § 3.2-6301. Liability limited; liability actions prohibited.

13006 A. Except as provided in § 3.2-6302, an ox activity sponsor or an ox professional shall not be liable

13007 for an injury to or death of a participant engaged in an ox activity.

13008 B. Except as provided in § 3.2-6302, no participant or parent or guardian of a participant who has

13009 knowingly executed a waiver of his rights to sue or agrees to assume all risks specifically enumerated

13010 under this subsection may maintain an action against or recover from an ox activity sponsor or an ox

13011 professional for an injury to or the death of a participant engaged in an ox activity. The waiver shall

13012 give notice to the participant of the risks inherent in ox activities, including: (i) the propensity of an ox

13013 to behave in dangerous ways that may result in injury to the participant; (ii) the inability to predict an

13014 ox's reaction to sound, movements, objects, persons, or animals; and (iii) hazards of surface or

13015 subsurface conditions. The waiver shall remain valid unless expressly revoked by the participant or

13016 parent or guardian of a minor. In the case of school-sponsored and college-sponsored classes and

13017 programs, waivers executed by a participant or parent or guardian of a participant shall apply to all ox

13018 activities in which the participant is involved in the next succeeding 12-month period unless earlier

13019 expressly revoked in writing.

13020 § 3.2-6302. Liability of ox activity sponsors, ox professionals.

13021 No provision of this chapter shall prevent or limit the liability of an ox activity sponsor or ox

13022 professional who:

- 13023 1. Intentionally injures the participant;
- 13024 2. Commits an act or omission that constitutes negligence for the safety of the participant and such
- 13025 act or omission caused the injury, unless such participant, parent or guardian has expressly assumed
- 13026 the risk causing the injury in accordance with subsection B of § 3.2-6301; or
- 13027 3. Knowingly provides faulty equipment or tack and such equipment or tack causes the injury or
- 13028 death of the participant.

CHAPTER 64.  
AGRITOURISM ACTIVITY LIABILITY.

13031 § 3.2-6400. Definitions.

13032 As used in this chapter, unless the context requires a different meaning:

13033 "Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural,

13034 viticulture, silvicultural, or other farm crops.

13035 "Agritourism activity" means any activity carried out on a farm or ranch that allows members of the

13036 general public, for recreational, entertainment, or educational purposes, to view or enjoy rural  
 13037 activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or  
 13038 natural activities and attractions. An activity is an agritourism activity whether or not the participant  
 13039 paid to participate in the activity.

13040 "Agritourism professional" means any person who is engaged in the business of providing one or  
 13041 more agritourism activities, whether or not for compensation.

13042 "Farm or ranch" means one or more areas of land used for the production, cultivation, growing,  
 13043 harvesting or processing of agricultural products.

13044 "Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of  
 13045 an agritourism activity including certain hazards, including surface and subsurface conditions; natural  
 13046 conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary  
 13047 dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of  
 13048 agritourism activity also include the potential of a participant to act in a negligent manner that may  
 13049 contribute to injury to the participant or others, including failing to follow instructions given by the  
 13050 agritourism professional or failing to exercise reasonable caution while engaging in the agritourism  
 13051 activity.

13052 "Participant" means any person, other than an agritourism professional, who engages in an  
 13053 agritourism activity.

13054 § 3.2-6401. Liability limited; liability actions prohibited.

13055 A. Except as provided in subsection B, an agritourism professional is not liable for injury to or  
 13056 death of a participant resulting from the inherent risks of agritourism activities, so long as the warning  
 13057 contained in § 3.2-6402 is posted as required and, except as provided in subsection B, no participant or  
 13058 participant's representative is authorized to maintain an action against or recover from an agritourism  
 13059 professional for injury, loss, damage, or death of the participant resulting exclusively from any of the  
 13060 inherent risks of agritourism activities; provided that in any action for damages against an agritourism  
 13061 professional for agritourism activity, the agritourism professional shall plead the affirmative defense of  
 13062 assumption of the risk of agritourism activity by the participant.

13063 B. Nothing in subsection A shall prevent or limit the liability of an agritourism professional if the  
 13064 agritourism professional does any one or more of the following:

13065 1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the  
 13066 safety of the participant, and that act or omission proximately causes injury, damage, or death to the  
 13067 participant;

13068 2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or  
 13069 in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal  
 13070 used in such activity and does not make the danger known to the participant, and the danger  
 13071 proximately causes injury, damage, or death to the participant; or

13072 3. Intentionally injures the participant.

13073 C. Any limitation on legal liability afforded by this section to an agritourism professional is in  
 13074 addition to any other limitations of legal liability otherwise provided by law.

13075 § 3.2-6402. Warning required.

13076 A. Every agritourism professional shall post and maintain signs that contain the warning notice  
 13077 specified in subsection B. The sign shall be placed in a clearly visible location at the entrance to the  
 13078 agritourism location and at the site of the agritourism activity. The warning notice shall consist of a  
 13079 sign in black letters, with each letter to be a minimum of one inch in height. Every written contract  
 13080 entered into by an agritourism professional for the providing of professional services, instruction, or the  
 13081 rental of equipment to a participant, whether or not the contract involves agritourism activities on or off  
 13082 the location or at the site of the agritourism activity, shall contain in clearly readable print the warning  
 13083 notice specified in subsection B.

13084 B. The signs and contracts described in subsection A shall contain the following notice of warning:

13085 "WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in an  
 13086 agritourism activity conducted at this agritourism location if such injury or death results from the  
 13087 inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others,  
 13088 risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a  
 13089 negligent manner that may contribute to your injury or death. You are assuming the risk of participating  
 13090 in this agritourism activity."

13091 C. Failure to comply with the requirements concerning warning signs and notices provided in this  
 13092 section shall prevent an agritourism professional from invoking the privileges of immunity provided by  
 13093 this chapter.

13094  
 13095  
 13096

CHAPTER 65.  
 COMPREHENSIVE ANIMAL CARE.  
 Article 1.

*General Provisions.*

- 13097  
 13098 § 3.2-6500. *Definitions.*  
 13099 *As used in this chapter unless the context requires a different meaning:*  
 13100 *"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another*  
 13101 *owner or custodian for the animal or by failing to provide the elements of basic care as set forth in*  
 13102 *§ 3.2-6503 for a period of five consecutive days.*  
 13103 *"Adequate care" or "care" means the responsible practice of good animal husbandry, handling,*  
 13104 *production, management, confinement, feeding, watering, protection, shelter, transportation, treatment,*  
 13105 *and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal*  
 13106 *and the provision of veterinary care when needed to prevent suffering or impairment of health.*  
 13107 *"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to*  
 13108 *maintain normal muscle tone and mass for the age, species, size, and condition of the animal.*  
 13109 *"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive*  
 13110 *value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit*  
 13111 *ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean*  
 13112 *and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is*  
 13113 *provided at suitable intervals for the species, age, and condition of the animal, but at least once daily,*  
 13114 *except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or*  
 13115 *fasting normal for the species.*  
 13116 *"Adequate shelter" means provision of and access to shelter that is suitable for the species, age,*  
 13117 *condition, size, and type of each animal; provides adequate space for each animal; is safe and protects*  
 13118 *each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold,*  
 13119 *physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each*  
 13120 *animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a*  
 13121 *solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to*  
 13122 *lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters*  
 13123 *whose wire, grid, or slat floors: (i) permit the animals' feet to pass through the openings; (ii) sag under*  
 13124 *the animals' weight; or (iii) otherwise do not protect the animals' feet or toes from injury are not*  
 13125 *adequate shelter.*  
 13126 *"Adequate space" means sufficient space to allow each animal to: (i) easily stand, sit, lie, turn about,*  
 13127 *and make all other normal body movements in a comfortable, normal position for the animal; and (ii)*  
 13128 *interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means*  
 13129 *a tether that permits the above actions and is appropriate to the age and size of the animal; is attached*  
 13130 *to the animal by a properly applied collar, halter, or harness configured so as to protect the animal*  
 13131 *from injury and prevent the animal or tether from becoming entangled with other objects or animals, or*  
 13132 *from extending over an object or edge that could result in the strangulation or injury of the animal; and*  
 13133 *is at least three times the length of the animal, as measured from the tip of its nose to the base of its*  
 13134 *tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When*  
 13135 *freedom of movement would endanger the animal, temporarily and appropriately restricting movement of*  
 13136 *the animal according to professionally accepted standards for the species is considered provision of*  
 13137 *adequate space.*  
 13138 *"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable*  
 13139 *temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at*  
 13140 *least once every 12 hours, to maintain normal hydration for the age, species, condition, size and type of*  
 13141 *each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of*  
 13142 *hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are*  
 13143 *accessible to each animal and are placed so as to minimize contamination of the water by excrement*  
 13144 *and pests or an alternative source of hydration consistent with generally accepted husbandry practices.*  
 13145 *"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from*  
 13146 *a releasing agency to an individual.*  
 13147 *"Agricultural animals" means all livestock and poultry.*  
 13148 *"Ambient temperature" means the temperature surrounding the animal.*  
 13149 *"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.2-6522,*  
 13150 *animal means any species susceptible to rabies. For the purposes of § 3.2-6570, animal means any*  
 13151 *nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a*  
 13152 *reasonable and customary manner.*  
 13153 *"Animal control officer" means a person appointed as an animal control officer or deputy animal*  
 13154 *control officer as provided in § 3.2-6555.*  
 13155 *"Animal shelter" means a facility, other than a private residential dwelling and its surrounding*  
 13156 *grounds, that is used to house or contain animals and that is owned, operated, or maintained by a*  
 13157 *nongovernmental entity including a humane society, animal welfare organization, society for the*  
 13158 *prevention of cruelty to animals, or any other organization operating for the purpose of finding*

- 13159 permanent adoptive homes for animals.
- 13160 "Boarding establishment" means a place or establishment other than a pound or animal shelter
- 13161 where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for
- 13162 a fee.
- 13163 "Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the
- 13164 animal's neck in such a way as to prevent trauma or injury to the animal.
- 13165 "Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate,
- 13166 guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or
- 13167 native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any
- 13168 animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or
- 13169 any animals regulated under federal law as research animals shall not be considered companion
- 13170 animals for the purposes of this chapter.
- 13171 "Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the
- 13172 services of a boarding establishment. The term "consumer" shall not include a business or corporation
- 13173 engaged in sales or services.
- 13174 "Dealer" means any person who in the regular course of business for compensation or profit buys,
- 13175 sells, transfers, exchanges, or barter companion animals. The following shall not be considered
- 13176 dealers: (i) any person who transports companion animals in the regular course of business as a
- 13177 common carrier; or (ii) any person whose primary purpose is to find permanent adoptive homes for
- 13178 companion animals.
- 13179 "Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or
- 13180 life.
- 13181 "Dump" means to knowingly desert, forsake, or absolutely give up without having secured another
- 13182 owner or custodian any dog, cat, or other companion animal in any public place including the
- 13183 right-of-way of any public highway, road or street or on the property of another.
- 13184 "Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition,
- 13185 alleviate suffering, prevent further disease transmission, or prevent further disease progression.
- 13186 "Enclosure" means a structure used to house or restrict animals from running at large.
- 13187 "Euthanasia" means the humane destruction of an animal accomplished by a method that involves
- 13188 instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced
- 13189 by an agent that causes painless loss of consciousness, and death during such loss of consciousness.
- 13190 "Exhibitor" means any person who has animals for or on public display, excluding an exhibitor
- 13191 licensed by the U.S. Department of Agriculture.
- 13192 "Facility" means a building, other than a private residential dwelling and its surrounding grounds,
- 13193 that is used to contain a primary enclosure or enclosures in which animals are housed or kept.
- 13194 "Foster care provider" means an individual who provides care or rehabilitation for companion
- 13195 animals through an affiliation with a pound, animal shelter, or other releasing agency.
- 13196 "Foster home" means a private residential dwelling and its surrounding grounds at which site
- 13197 through an affiliation with a pound, animal shelter, or other releasing agency care or rehabilitation is
- 13198 provided for companion animals.
- 13199 "Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats
- 13200 for external parasites any animal.
- 13201 "Home-based rescue" means any person that accepts: (i) more than 12 companion animals; or (ii)
- 13202 more than nine companion animals and more than three unweaned litters of companion animals in a
- 13203 calendar year for the purpose of finding permanent adoptive homes for the companion animals and
- 13204 houses the companion animals in a private residential dwelling or uses a system of housing companion
- 13205 animals in private residential foster homes.
- 13206 "Humane" means any action taken in consideration of and with the intent to provide for the animal's
- 13207 health and well-being.
- 13208 "Humane investigator" means a person who has been appointed by a circuit court as a humane
- 13209 investigator as provided in § 3.2-6558.
- 13210 "Humane society" means any incorporated, nonprofit organization that is organized for the purposes
- 13211 of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.
- 13212 "Kennel" means any establishment in which five or more canines, felines, or hybrids of either are
- 13213 kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.
- 13214 "Law-enforcement officer" means any person who is a full-time or part-time employee of a police
- 13215 department or sheriff's office that is part of or administered by the Commonwealth or any political
- 13216 subdivision thereof and who is responsible for the prevention and detection of crime and the
- 13217 enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are
- 13218 compensated officers who are not full-time employees as defined by the employing police department or
- 13219 sheriff's office.

- 13220 "Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals;  
13221 porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or  
13222 shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares  
13223 raised for human food or fiber; or any other individual animal specifically raised for food or fiber,  
13224 except companion animals.
- 13225 "New owner" means an individual who is legally competent to enter into a binding agreement  
13226 pursuant to subdivision B 2 of § 3.2-6574, and who adopts or receives a dog or cat from a releasing  
13227 agency.
- 13228 "Ordinance" means any law, rule, regulation, or ordinance adopted by the governing body of any  
13229 locality.
- 13230 "Other officer" includes all other persons employed or elected by the people of Virginia, or by any  
13231 locality, whose duty it is to preserve the peace, to make arrests, or to enforce the law.
- 13232 "Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an  
13233 animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.
- 13234 "Pet shop" means an establishment where companion animals are bought, sold, exchanged, or  
13235 offered for sale or exchange to the general public.
- 13236 "Poultry" includes all domestic fowl and game birds raised in captivity.
- 13237 "Pound" means a facility operated by the Commonwealth, or any locality, for the purpose of  
13238 impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility  
13239 operated for the same purpose under a contract with any locality or incorporated society for the  
13240 prevention of cruelty to animals.
- 13241 "Primary enclosure" means any structure used to immediately restrict an animal or animals to a  
13242 limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the  
13243 term includes the shelter and the area within reach of the tether.
- 13244 "Properly cleaned" means that carcasses, debris, food waste, and excrement are removed from the  
13245 primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned  
13246 contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the  
13247 hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein  
13248 from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to  
13249 hazardous chemicals or disinfectants.
- 13250 "Properly lighted" when referring to a facility means sufficient illumination to permit routine  
13251 inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to  
13252 provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout  
13253 the facility; and to promote the well-being of the animals.
- 13254 "Properly lighted" when referring to a private residential dwelling and its surrounding grounds  
13255 means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the  
13256 companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to  
13257 promote the well-being of the animals.
- 13258 "Releasing agency" means a pound, animal shelter, humane society, animal welfare organization,  
13259 society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that  
13260 releases companion animals for adoption.
- 13261 "Research facility" means any place, laboratory, or institution licensed by the U.S. Department of  
13262 Agriculture at which scientific tests, experiments, or investigations involving the use of living animals  
13263 are carried out, conducted, or attempted.
- 13264 "Sanitize" means to make physically clean and to remove and destroy, to a practical minimum,  
13265 agents injurious to health.
- 13266 "Sore" means, when referring to an equine, that an irritating or blistering agent has been applied,  
13267 internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that  
13268 has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent  
13269 that has been injected by a person into or used by a person on any limb or foot of an equine; any other  
13270 substance or device that has been used by a person on any limb or foot of an equine; or a person has  
13271 engaged in a practice involving an equine, and as a result of such application, infliction, injection, use,  
13272 or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress,  
13273 inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not  
13274 include such an application, infliction, injection, use, or practice in connection with the therapeutic  
13275 treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything  
13276 contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action  
13277 devices as permitted by 9 C.F.R. Part 11.2.
- 13278 "Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed  
13279 veterinarian that renders a dog or cat permanently incapable of reproducing.
- 13280 "Treasurer" includes the treasurer and his assistants of each county or city or other officer  
13281 designated by law to collect taxes in such county or city.



13282 "Treatment" or "adequate treatment" means the responsible handling or transportation of animals in  
 13283 the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of  
 13284 the animal.

13285 "Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

13286 "Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid  
 13287 food or food customary for the adult of the species, and has ingested such food, without nursing, for a  
 13288 period of at least five days.

13289 § 3.2-6501. Regulations and guidelines.

13290 The Board may adopt regulations and guidelines consistent with the objectives and intent of this  
 13291 chapter concerning the care and transportation of animals.

13292 § 3.2-6502. State Veterinarian's power to inspect premises where animals are kept; investigations and  
 13293 search warrants.

13294 A. The State Veterinarian and each State Veterinarian's representative shall have the power to  
 13295 conduct inspections of animal shelters, and inspect any business premises where animals are housed or  
 13296 kept, including any boarding establishment, kennel, pet shop, pound, or the business premises of any  
 13297 dealer, exhibitor or groomer, at any reasonable time, for the purposes of determining if a violation of:  
 13298 (i) this chapter; (ii) any other state law governing the care, control or protection of animals; or (iii)  
 13299 any other state law governing property rights in animals has occurred.

13300 B. Provisions for investigation of suspected violations of this chapter and other laws pertaining to  
 13301 animals are provided in § 3.2-6564. Provisions for obtaining a warrant and the power of search for  
 13302 violations of animal cruelty laws are provided in § 3.2-6568.

13303 Article 2.

13304 Animal Welfare.

13305 § 3.2-6503. Care of companion animals by owner; penalty.

13306 A. Each owner shall provide for each of his companion animals:

13307 1. Adequate feed;

13308 2. Adequate water;

13309 3. Adequate shelter that is properly cleaned;

13310 4. Adequate space in the primary enclosure for the particular type of animal depending upon its age,  
 13311 size, species, and weight;

13312 5. Adequate exercise;

13313 6. Adequate care, treatment, and transportation; and

13314 7. Veterinary care when needed or to prevent suffering or disease transmission.

13315 The provisions of this section shall also apply to every pound, animal shelter, or other releasing  
 13316 agency, and every foster care provider, dealer, pet shop, exhibitor, kennel, groomer, and boarding  
 13317 establishment. This section shall not require that animals used as food for other animals be euthanized.

13318 B. Violation of this section is a Class 4 misdemeanor.

13319 § 3.2-6504. Abandonment of animal; penalty.

13320 No person shall abandon or dump any animal. Violation of this section is a Class 3 misdemeanor.  
 13321 Nothing in this section shall be construed to prohibit the release of an animal by its owner to a pound,  
 13322 animal shelter, or other releasing agency.

13323 § 3.2-6505. Disposal of animals by means of decompression chamber prohibited.

13324 No animal shall be euthanized pursuant to the provisions of this chapter by means of a high altitude  
 13325 decompression chamber.

13326 § 3.2-6506. Exceptions regarding veterinarians.

13327 Sections 3.2-6503, 3.2-6504, 3.2-6508 through, 3.2-6519, 3.2-6557, 3.2-6559, 3.2-6561, 3.2-6564,  
 13328 3.2-6565, and 3.2-6574 through 3.2-6580 shall not apply to: (i) a place or establishment that is  
 13329 operated under the immediate supervision of a duly licensed veterinarian as a hospital or boarding  
 13330 establishment where animals are harbored, boarded and cared for incident to the treatment, prevention,  
 13331 or alleviation of disease processes during the routine practice of the profession of veterinary medicine;  
 13332 or (ii) animals boarded under the immediate supervision of a duly licensed veterinarian.

13333 § 3.2-6507. Injured or sick animal; action by veterinarian.

13334 A. If a licensed veterinarian is called or by his own action comes upon an animal that is sick or  
 13335 injured and the owner of such animal cannot be immediately located, then the licensed veterinarian, in  
 13336 his professional judgment, may treat, hospitalize or euthanize the animal without the permission of the  
 13337 owner. The veterinarian shall make such reports and keep such records of such sick or injured animals  
 13338 as may be prescribed by the Board of Veterinary Medicine, including the information required under  
 13339 subsection B of § 3.2-6557.

13340 B. In no event shall a licensed veterinarian who has acted in good faith and properly exercised  
 13341 professional judgment regarding an animal be subject to liability for his actions in: (i) acting in  
 13342 accordance with subsection A; or (ii) reporting cases of suspected cruelty to animals.

## Article 3.

*Transportation and Sale of Animals.*

§ 3.2-6508. *Transporting animals; requirements; penalty.*

A. No owner, railroad or other common carrier when transporting any animal shall allow that animal to be confined in any type of conveyance more than 24 consecutive hours without being exercised, properly rested, fed and watered as necessary for that particular type and species of animal. A reasonable extension of this time shall be permitted when an accident, storm or other act of God causes a delay. Adequate space in the primary enclosure within any type of conveyance shall be provided each animal depending upon the particular type and species of animal.

B. No person shall import into the Commonwealth, nor export from the Commonwealth, for the purpose of sale or offering for sale any dog or cat under the age of eight weeks without its dam.

C. Violation of this section is a Class 1 misdemeanor.

§ 3.2-6509. *Misrepresentation of animal's condition; penalties.*

No person shall misrepresent the physical condition of any animal at the animal's sale, trade, delivery, or other method of transfer. For the purpose of this section, misrepresentation shall include selling, trading, delivering or otherwise transferring an animal to another person with the knowledge that the animal has an infection, communicable disease, parasitic infestation, abnormality or other physical defect that is not made known to the person receiving the animal. The sale of an agricultural animal that has external or internal parasites that are not made known to the person receiving the animal shall not be a violation of this section unless the animal is clinically ill or debilitated due to such parasites at the time of sale, trade, delivery or transfer of the animal. Violation of this section is a Class 3 misdemeanor.

§ 3.2-6510 *Sale of unweaned or certain immature animals prohibited, vaccinations required for dogs and cats; penalty.*

A. No person shall sell, raffle, give away, or offer for sale as pets or novelties, or offer or give as a prize, premium, or advertising device any living chicks, ducklings, or other fowl under two months old in quantities of less than six or any unweaned mammalian companion animal or any dog or cat under the age of seven weeks without its dam or queen. Dealers may offer immature fowl, unweaned mammalian companion animals, dogs or cats under the age of seven weeks for sale as pets or novelties with the requirement that prospective owners take possession of the animals only after fowl have reached two months of age, mammalian companion animals have been weaned, and dogs and cats are at least seven weeks of age. Nothing in this section shall prohibit the sale, gift, or transfer of an unweaned animal: (i) as food for other animals; (ii) with the lactating dam or queen or a lactating surrogate dam or queen that has accepted the animal; (iii) due to a concern for the health or safety of the unweaned animal; or (iv) to animal control, an animal shelter, or a veterinarian.

B. Dealers shall provide all dogs and cats with current vaccinations against contagious and infectious diseases, as recommended in writing and considered appropriate for the animal's age and breed by a licensed veterinarian, or pursuant to written recommendations provided by the manufacturer of such vaccines at least five days before any new owner takes possession of the animal. For dogs, the vaccinations required by this subsection shall include at a minimum canine distemper, adenovirus type II parainfluenza, and parvovirus. For cats, the vaccinations required by this subsection shall include at a minimum rhinotracheitis, calicivirus, and panleukopenia. Dealers shall provide the new owner with the dog's or cat's immunization history.

C. A violation of this section is a Class 3 misdemeanor.

§ 3.2-6511. *Failure of dealer or pet shop to provide adequate care; penalty.*

Any dealer or pet shop that fails to adequately house, feed, water, exercise or care for animals in his or its possession or custody as provided for under this chapter is guilty of a Class 3 misdemeanor. Such animals shall be subject to seizure and impoundment, and upon conviction of such person the animals may be sold, euthanized, or disposed of as provided by § 3.2-6546 for licensed, tagged, or tattooed animals. Such failure is also grounds for revocation of a permit or certificate of registration after public hearing. Any funds that result from such sale shall be used first to pay the costs of the local jurisdiction for the impoundment and disposition of the animals, and any funds remaining shall be paid to the owner, if known. If the owner is not found, the remaining funds shall be paid into the Literary Fund.

§ 3.2-6512. *Sale without pet dealer's animal history certificate violation of Consumer Protection Act; contents of certificate.*

It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for any pet dealer to sell a dog or cat within the Commonwealth stating, promising or representing that the animal is registered or capable of being registered with any animal pedigree registry organization, without providing the consumer with a pet dealer's animal history certificate at the time the consumer takes possession of the dog or cat. The pet dealer's animal history certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

1. The animal's breed, sex, age, color, and birth date;

- 13405 2. The name and address of the person from whom the pet dealer purchased the animal;  
 13406 3. The breeder's name and address;  
 13407 4. The name and registration number of the animal's parents;  
 13408 5. If the animal has been so examined, the date on which the animal has been examined by a  
 13409 licensed veterinarian, the name and address of such veterinarian, and a brief statement of any findings  
 13410 made; and  
 13411 6. A statement of all vaccinations administered to the animal, including the identity and quantity of  
 13412 the vaccine, and the name and address of the person or licensed veterinarian administering or  
 13413 supervising the vaccinations.  
 13414 The information contained in the pet dealer's animal history certificate required herein shall be  
 13415 informative only, and the pet dealer shall not be responsible in any manner for the accuracy of such  
 13416 information unless he knows or has reason to know that such information is erroneous.  
 13417 A copy of the pet dealer's animal history certificate signed by the consumer shall be maintained by  
 13418 the pet dealer for a period of one year following the date of sale.  
 13419 § 3.2-6513. Inclusion of false or misleading statements in certificate violation of Consumer Protection  
 13420 Act.  
 13421 It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a pet dealer  
 13422 to include in the pet dealer's animal history certificate provided for in § 3.2-6512 any false or  
 13423 misleading statement regarding the information to be contained therein.  
 13424 § 3.2-6514. Consumer remedies for receipt of diseased animal upon certification by veterinarian.  
 13425 A. If, at any time within 10 days following receipt of an animal described as being registered or  
 13426 capable of being registered with any animal pedigree organization and subject to this chapter, a  
 13427 licensed veterinarian certifies such animal to be unfit for purchase due to illness, a congenital defect  
 13428 deleterious to the health of the animal, or the presence of symptoms of a contagious or infectious  
 13429 disease, the pet dealer shall afford the consumer the right to choose one of the following options:  
 13430 1. The right to return the animal and receive a refund of the purchase price including sales tax; or  
 13431 2. The right to return the animal and to receive an exchange animal of equivalent value from the  
 13432 dealer, subject to the choice of the consumer.  
 13433 The refund or reimbursement required by this section shall be made by the pet dealer not later than  
 13434 10 business days following receipt of a signed veterinary certification as provided in § 3.2-6515.  
 13435 § 3.2-6515. Written notice of consumer remedies required to be supplied by pet dealers.  
 13436 A pet dealer shall give the notice hereinafter set forth in writing to a consumer prior to the delivery  
 13437 of a dog or cat. Such notice shall be embodied in a written contract, the pet dealer's animal history  
 13438 certificate, or a separate document and shall state in ten-point boldface type the following:  
 13439 **NOTICE**  
 13440 The sale of certain dogs and cats described as being registered or capable of being registered with  
 13441 any animal pedigree organization is subject to the provisions of the Virginia Consumer Protection Act  
 13442 (§ 59.1-196 et seq.). In the event that a licensed veterinarian certifies your animal to be unfit for  
 13443 purchase within 10 days following receipt of your animal, you may choose: (i) to return your animal  
 13444 and receive a refund of the purchase price; or (ii) to return the animal and receive an exchange animal  
 13445 of your choice of equivalent value.  
 13446 In order to exercise these rights you must present a written veterinary certification that the animal is  
 13447 unfit to the pet dealer within three business days after receiving such certification.  
 13448 If the pet dealer has promised to register your animal or to provide the papers necessary therefor  
 13449 and fails to do so within 120 days following the date of contract, you are entitled to return the animal  
 13450 and receive a refund of the purchase price or to retain the animal and receive a refund of an amount  
 13451 not to exceed 50 percent of the purchase price.  
 13452 § 3.2-6516. Failure of pet dealer to effect registration after promise; violation of Consumer  
 13453 Protection Act; remedies; veterinary certification; finding of intestinal parasites; illness subsequent to  
 13454 sale.  
 13455 A. It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a pet  
 13456 dealer to state, promise, or represent that a dog or cat is registered or capable of being registered with  
 13457 any animal pedigree registry organization if the pet dealer shall then fail to either effect such  
 13458 registration or provide the consumer with the documents necessary therefor within 120 days following  
 13459 the date of sale of such animal. In the event that a pet dealer fails to effect registration or to provide  
 13460 the necessary documents therefor within 120 days following the date of sale, the consumer shall be  
 13461 entitled to choose one of the following options:  
 13462 1. To return the animal and to receive a refund of the purchase price plus sales tax; or  
 13463 2. To retain the animal and to receive a refund of an amount not to exceed 50 percent of the  
 13464 purchase price and sales tax.  
 13465 B. The veterinary certification and statement required herein shall be presented to the pet dealer not

13466 later than three business days following receipt thereof by the consumer and shall contain the following  
 13467 information:

13468 1. The name of the owner;

13469 2. The date or dates of the examination;

13470 3. The breed, color, sex, and age of the animal;

13471 4. A description of the veterinarian's findings;

13472 5. A statement that the veterinarian certifies the animal to be unfit for purchase; and

13473 6. The name and address of the certifying veterinarian and the date of the certification.

13474 C. A veterinary finding of intestinal parasites shall not be grounds for declaring the animal unfit for  
 13475 purchase unless the animal is clinically ill due to such condition. An animal may not be found unfit for  
 13476 purchase on account of an injury sustained or illness contracted subsequent to the consumer taking  
 13477 possession thereof.

13478 § 3.2-6517. Remedies cumulative.

13479 The remedies provided for pursuant to this article are cumulative and not exclusive and shall be in  
 13480 addition to any other remedy provided for by law.

13481 Article 4.

13482 Boarding Establishments and Groomers.

13483 § 3.2-6518. Boarding establishments and groomers; veterinary care requirements; consumer  
 13484 notification; penalty.

13485 A. When an animal is boarded at a boarding establishment, or under the care, custody or subject to  
 13486 the actions of a groomer, the boarding establishment or groomer shall be responsible for providing the  
 13487 animal care requirements for each animal as specified in § 3.2-6503.

13488 B. If an animal becomes ill or injured while in the custody of the boarding establishment or  
 13489 groomer, the boarding establishment or groomer shall provide the animal with emergency veterinary  
 13490 treatment for the illness or injury. The consumer shall bear the reasonable and necessary costs of  
 13491 emergency veterinary treatment for any illness or injury occurring while the animal is in the custody of  
 13492 the boarding establishment or groomer. The boarding establishment or groomer shall pay for veterinary  
 13493 treatment of any injury that the animal sustains while at the establishment or under the care or custody  
 13494 of a groomer if the injury resulted from the establishment's or groomer's failure, whether accidental or  
 13495 intentional, to provide the care required by § 3.2-6503, or if the injury is a result of the actions of the  
 13496 boarding establishment or groomer. Boarding establishments and groomers shall not be required to bear  
 13497 the cost of veterinary treatment for injuries resulting from the animal's self-mutilation.

13498 C. If an animal is seized from a boarding establishment or groomer because of the establishment's or  
 13499 groomer's failure to provide adequate food, water, shelter, exercise, and care as defined in § 3.2-6500  
 13500 and required by § 3.2-6503 or because of any other violation of this chapter, the animal shall be  
 13501 returned to the rightful owner as soon as possible or, if the owner refuses to reclaim the animal, be  
 13502 impounded and disposition made pursuant to § 3.2-6569.

13503 D. Violation of this section by a boarding establishment or groomer is a Class 1 misdemeanor.

13504 § 3.2-6519. Written notice of consumer remedies required to be supplied by boarding establishments;  
 13505 penalty.

13506 A. A boarding establishment shall give the notice hereinafter set forth in writing to a consumer prior  
 13507 to the consumer's delivery of the animal to the boarding establishment. Such notice shall be embodied in  
 13508 a written document and shall state in ten-point boldfaced type the following:

13509 NOTICE

13510 The boarding of animals is subject to Article 4 (§ 3.2-6518 et seq.) of Chapter 65 of Title 3.2. If  
 13511 your animal becomes ill or injured while in the custody of the boarding establishment, the boarding  
 13512 establishment shall provide the animal with emergency veterinary treatment for the illness or injury.

13513 The consumer shall bear the reasonable and necessary costs of emergency veterinary treatment for  
 13514 any illness or injury occurring while the animal is in the custody of the boarding establishment. The  
 13515 boarding establishment shall bear the expenses of veterinary treatment for any injury the animal  
 13516 sustains while at the boarding establishment if the injury resulted from the establishment's failure,  
 13517 whether accidental or intentional, to provide the care required by § 3.2-6503. Boarding establishments  
 13518 shall not be required to bear the cost of veterinary treatment for injuries resulting from the animal's  
 13519 self-mutilation.

13520 B. In addition, the boarding establishment shall display the following notice, in ten-point boldfaced  
 13521 type, on a sign placed in a conspicuous location and manner at the boarding establishment's intake  
 13522 area:

13523 PUBLIC NOTICE

13524 THE BOARDING OF ANIMALS BY A BOARDING ESTABLISHMENT IS SUBJECT TO ARTICLE 4  
 13525 (§ 3.2-6518 et seq.) OF CHAPTER 65 OF TITLE 3.2 OF THE CODE OF VIRGINIA. YOU HAVE  
 13526 SPECIFIC REMEDIES WHEN BOARDING ANIMALS IN THIS OR ANY OTHER BOARDING  
 13527 ESTABLISHMENT IN VIRGINIA. A COPY IS AVAILABLE IMMEDIATELY UPON REQUEST AND IS

13528 TO BE PRESENTED TO YOU AT THE TIME OF INTAKE IN THE FORM OF A WRITTEN  
 13529 DOCUMENT. IF YOU HAVE A COMPLAINT, YOU MAY CONTACT YOUR LOCAL  
 13530 LAW-ENFORCEMENT OFFICER OR THE VIRGINIA DEPARTMENT OF AGRICULTURE AND  
 13531 CONSUMER SERVICES, RICHMOND, VIRGINIA.

13532 C. Failure to display or provide the consumer with the written notice as required by this section is a  
 13533 Class 3 misdemeanor.

13534 § 3.2-6520. Procedure for animals left unclaimed with veterinarian or boarding establishment after  
 13535 public notice; lien; sale.

13536 Any animal not claimed by its owner from a licensed veterinarian or boarding establishment within  
 13537 14 days after a letter of notice has been sent to the owner, by the veterinarian or boarding  
 13538 establishment, may be sold by the veterinarian or boarding establishment. The animal may be sold at  
 13539 public or private sale for fair compensation to a person capable of providing care consistent with this  
 13540 chapter. Any expense incurred by the veterinarian or boarding establishment becomes a lien on the  
 13541 animal and the proceeds of the sale shall first discharge this lien. Any balance of the proceeds shall be  
 13542 paid to the owner. If the owner cannot be found within the next ensuing 30 days, the balance shall be  
 13543 paid to the Literary Fund. If no purchaser is found, the animal may be offered for adoption or  
 13544 euthanized.

#### 13545 Article 5.

#### 13546 Rabies Control and Licensing of Dogs and Cats.

13547 § 3.2-6521. Rabies inoculation of dogs and domesticated cats; availability of certificate; rabies  
 13548 clinics.

13549 A. The owner or custodian of all dogs and domesticated cats four months of age and older shall  
 13550 have them currently vaccinated for rabies by a licensed veterinarian or licensed veterinary technician  
 13551 who is under the immediate and direct supervision of a licensed veterinarian on the premises. The  
 13552 supervising veterinarian on the premises shall provide the owner of the dog or the custodian of the  
 13553 domesticated cat with a certificate of vaccination. The owner of the dog or the custodian of the  
 13554 domesticated cat shall furnish within a reasonable period of time, upon the request of an animal control  
 13555 officer, humane investigator, law-enforcement officer, State Veterinarian's representative, or official of  
 13556 the Department of Health, the certificate of vaccination for such dog or cat. The vaccine used shall be  
 13557 licensed by the U.S. Department of Agriculture for use in that species.

13558 B. Rabies clinics, approved by the appropriate health department and governing body, shall be held  
 13559 at least once per year when the governing body finds that the number of resident veterinarians is  
 13560 otherwise inadequate to meet the need.

13561 § 3.2-6522. Rabid animals.

13562 When there is sufficient reason to believe that a rabid animal is at large, the governing body of any  
 13563 locality shall have the power to pass an emergency ordinance that shall become effective immediately  
 13564 upon passage, requiring owners of all dogs and cats therein to keep the same confined on their  
 13565 premises unless leashed under restraint of the owner in such a manner that persons or animals will not  
 13566 be subject to the danger of being bitten by the rabid animal. Any such emergency ordinance enacted  
 13567 pursuant to the provisions of this section shall be operative for a period not to exceed 30 days unless  
 13568 renewed by the governing body of such locality. The governing body of any locality shall also have the  
 13569 power and authority to pass ordinances restricting the running at large in their respective jurisdiction of  
 13570 dogs and cats that have not been inoculated or vaccinated against rabies and to provide penalties for  
 13571 the violation thereof.

13572 Dogs or cats showing active signs of rabies or suspected of having rabies shall be confined under  
 13573 competent observation for such a time as may be necessary to determine a diagnosis. If confinement is  
 13574 impossible or impracticable, such dog or cat shall be euthanized by one of the methods approved by the  
 13575 State Veterinarian as provided in § 3.2-6546.

13576 Every person having knowledge of the existence of an animal apparently afflicted with rabies shall  
 13577 report immediately to the local health department the existence of such animal, the place where seen,  
 13578 the owner's name, if known, and the symptoms suggesting rabies.

13579 Any dog or cat, for which no proof of current rabies vaccination is available, and that is exposed to  
 13580 rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or  
 13581 mucous membrane, by an animal believed to be afflicted with rabies, shall be confined in a pound,  
 13582 kennel or enclosure approved by the health department for a period not to exceed six months at the  
 13583 expense of the owner. If this is not feasible, the dog or cat shall be euthanized by one of the methods  
 13584 approved by the State Veterinarian as provided in § 3.2-6546. A rabies vaccination shall be  
 13585 administered prior to release. Inactivated rabies vaccine may be administered at the beginning of  
 13586 confinement. Any dog or cat so bitten, or exposed to rabies through saliva or central nervous system  
 13587 tissue, in a fresh open wound or mucous membrane with proof of a valid rabies vaccination, shall be  
 13588 revaccinated immediately following the bite and shall be confined to the premises of the owner, or other

13589 *site as may be approved by the local health department, for a period of 45 days.*

13590 *At the discretion of the director of a local health department, any animal that has bitten a person*  
13591 *shall be confined under competent observation for 10 days, unless the animal develops active symptoms*  
13592 *of rabies or expires before that time. A seriously injured or sick animal may be euthanized as provided*  
13593 *in § 3.2-6546, and its head sent to the Division of Consolidated Laboratory Services of the Department*  
13594 *of General Services, or the local health department, for evaluation.*

13595 *When any potentially rabid animal, other than a dog or cat, exposes or may have exposed a person*  
13596 *to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or*  
13597 *mucous membrane, that animal shall be confined at the discretion of a local health director in a manner*  
13598 *approved by the health department or euthanized as provided in § 3.2-6546 and its head sent to the*  
13599 *Division of Consolidated Laboratory Services of the Department of General Services or the local health*  
13600 *department for evaluation.*

13601 *When any animal, other than a dog or cat, is exposed to rabies through a bite, or through saliva or*  
13602 *central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be*  
13603 *afflicted with rabies, that newly exposed animal shall be confined at the discretion of a local health*  
13604 *director in a manner approved by the health department or euthanized as provided in § 3.2-6546.*

13605 *§ 3.2-6523. Inoculation for rabies at animal shelters.*

13606 *Dogs and cats being adopted from an animal shelter during the period an emergency ordinance is in*  
13607 *force, as provided for in § 3.2-6522 may be inoculated for rabies by a certified animal technician at*  
13608 *such shelter if the certified animal technician is under the immediate and direct supervision of a*  
13609 *licensed veterinarian.*

13610 *§ 3.2-6524. Unlicensed dogs prohibited; ordinances for licensing cats.*

13611 *A. It shall be unlawful for any person other than a releasing agency that has registered as such*  
13612 *annually with local animal control to own a dog four months old or older in the Commonwealth unless*  
13613 *such dog is licensed, as required by the provisions of this article.*

13614 *B. The governing body of any locality may, by ordinance, prohibit any person other than a releasing*  
13615 *agency that has registered as such annually with local animal control from owning a cat four months*  
13616 *old or older within such locality unless such cat is licensed as provided by this article.*

13617 *§ 3.2-6525. Regulations to prevent spread of rabies.*

13618 *A. The governing body of any locality may adopt such ordinances, regulations or other measures as*  
13619 *may be deemed reasonably necessary to prevent the spread within its boundaries of the disease of*  
13620 *rabies. Penalties may be provided for the violation of any such ordinances. If the ordinance declares the*  
13621 *existence of an emergency, then the ordinance shall be in force upon passage.*

13622 *B. The governing body of Fairfax County may adopt an ordinance creating a program for the*  
13623 *distribution of oral rabies vaccine within its boundaries to prevent the spread of rabies. An ordinance*  
13624 *enacted pursuant to this subsection shall contain the following provisions:*

13625 *1. Notice shall be given to the owner or occupant of property prior to the entry upon the property*  
13626 *for the purpose of the distribution of oral rabies vaccine or the use of any other methods to place oral*  
13627 *rabies vaccine on the property. Notice shall be given by: (i) sending two letters by first-class mail, at*  
13628 *successive intervals of not less than two weeks set forth in the ordinance; and (ii) printing a copy*  
13629 *thereof, at least once, in a newspaper of general circulation in the locality concerned. Written notice*  
13630 *shall be in a form approved by the governing body and shall include a description of the purpose for*  
13631 *which entry upon the property is to be made, the time and method of rabies vaccine distribution at the*  
13632 *property, and the submission deadline for requests by any owner or occupant of property who wishes to*  
13633 *be excluded from the oral rabies vaccine distribution program.*

13634 *2. The owner or occupant of property may refuse to allow the distribution of oral rabies vaccine*  
13635 *upon such property. The ordinance shall establish procedures to be followed by any owner or occupant*  
13636 *who wishes to be excluded from the oral rabies vaccine distribution program, including the time and*  
13637 *method by which requests for nonparticipation must be received. If the governing body receives a*  
13638 *request for nonparticipation by the owner or occupant of property for the distribution of oral rabies*  
13639 *vaccine, no further action shall be taken to distribute oral vaccine, on such property for a period of one*  
13640 *year.*

13641 *Nothing in this subsection shall be construed to limit any authority for the distribution of oral rabies*  
13642 *vaccine otherwise provided by law.*

13643 *§ 3.2-6526. What dog or cat license shall consist of.*

13644 *A. A dog or cat license shall consist of a license receipt and a metal tag. The tag shall be stamped*  
13645 *or otherwise permanently marked to show the jurisdiction issuing the license and bear a serial number*  
13646 *or other identifying information prescribed by the locality.*

13647 *B. No license tag shall be issued for any dog or cat unless there is presented, to the treasurer or*  
13648 *other officer of the locality, or other agent charged by law with the duty of issuing license tags for dogs*  
13649 *and cats, satisfactory evidence that such dog or cat has been inoculated or vaccinated against rabies by*  
13650 *a currently licensed veterinarian or currently licensed veterinary technician who was under the*

13651 *immediate and direct supervision of a licensed veterinarian on the premises.*

13652 *§ 3.2-6527. How to obtain license.*

13653 *Any person may obtain a dog license or cat license if required by an ordinance adopted pursuant to*  
 13654 *subsection B of § 3.2-6524, by making oral or written application to the treasurer of the locality where*  
 13655 *such person resides, accompanied by the amount of license tax and current certificate of vaccination as*  
 13656 *required by this article or satisfactory evidence that such certificate has been obtained. The treasurer or*  
 13657 *other officer charged with the duty of issuing dog and cat licenses shall only have authority to license*  
 13658 *dogs and cats of resident owners or custodians who reside within the boundary limits of his county or*  
 13659 *city and may require information to this effect from any applicant. Upon receipt of proper application*  
 13660 *and current certificate of vaccination as required by this article or satisfactory evidence that such*  
 13661 *certificate has been obtained, the treasurer or other officer charged with the duty of issuing dog and cat*  
 13662 *licenses shall issue a license receipt for the amount on which he shall record the name and address of*  
 13663 *the owner or custodian, the date of payment, the year for which issued, the serial number of the tag,*  
 13664 *whether dog or cat, whether male or female, whether spayed or neutered, or whether a kennel, and*  
 13665 *deliver the metal license tags or plates provided for herein. The information thus received shall be*  
 13666 *retained by the treasurer, open to public inspection, during the period for which such license is valid.*  
 13667 *The treasurer may establish substations in convenient locations in the county or city and appoint agents*  
 13668 *for the collection of the license tax and issuance of such licenses.*

13669 *§ 3.2-6528. Amount of license tax.*

13670 *The governing body of each county or city shall impose by ordinance a license tax on the ownership*  
 13671 *of dogs within its jurisdiction. The governing body of any locality that has adopted an ordinance*  
 13672 *pursuant to subsection B of § 3.2-6524 shall impose by ordinance a license tax on the ownership of cats*  
 13673 *within its jurisdiction. The governing body may establish different rates of taxation for ownership of*  
 13674 *female dogs, male dogs, spayed or neutered dogs, female cats, male cats, and spayed or neutered cats.*  
 13675 *The tax for each dog or cat shall not be less than \$1 and not more than \$10 for each year. If the dog*  
 13676 *or cat has been spayed, the tax shall not exceed the tax provided for a male dog or cat. Any ordinance*  
 13677 *may provide for a license tax for kennels of 10, 20, 30, 40, or 50 dogs or cats not to exceed \$50 for*  
 13678 *any one such block of kennels.*

13679 *No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind*  
 13680 *person, that is trained and serves as a hearing dog for a deaf or hearing impaired person or that is*  
 13681 *trained and serves as a service dog for a mobility-impaired person.*

13682 *As used in this section, "hearing dog" means a dog trained to alert its owner by touch to sounds of*  
 13683 *danger and sounds to which the owner should respond and "service dog" means a dog trained to*  
 13684 *accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other*  
 13685 *such activities of service or support.*

13686 *§ 3.2-6529. Veterinarians to provide treasurer with rabies certificate information; civil penalty.*

13687 *A. Each veterinarian who vaccinates a dog against rabies or directs a veterinary technician in his*  
 13688 *employ to vaccinate a dog against rabies shall provide the owner a copy of the rabies vaccination*  
 13689 *certificate. The veterinarian shall forward within 45 days a copy of the rabies vaccination certificate or*  
 13690 *the relevant information contained in such certificate to the treasurer of the locality where the*  
 13691 *vaccination occurs.*

13692 *The rabies vaccination certificate shall include at a minimum the signature of the veterinarian, the*  
 13693 *animal owner's name and address, the species of the animal, the sex, the age, the color, the primary*  
 13694 *breed, whether or not the animal is spayed or neutered, the vaccination number, and expiration date.*  
 13695 *The rabies vaccination certificate shall indicate the locality where the animal resides.*

13696 *B. It shall be the responsibility of the owner of each vaccinated animal that is not already licensed*  
 13697 *to apply for a license for the vaccinated dog. Beginning January 1, 2008, if the treasurer determines,*  
 13698 *from review of the rabies vaccination information provided by veterinarians, that the owner of an*  
 13699 *unlicensed dog has failed to apply for a license within 90 days of the date of vaccination, the treasurer*  
 13700 *shall transmit an application to the owner and request the owner to submit a completed application and*  
 13701 *pay the appropriate fee. Upon receipt of the completed application and payment of the license fee, the*  
 13702 *treasurer or other agent charged with the duty of issuing the dog licenses shall issue a license receipt*  
 13703 *and a permanent tag.*

13704 *The treasurer shall remit any rabies vaccination certificate received for any animal owned by an*  
 13705 *individual residing in another locality to the local treasurer for the appropriate locality.*

13706 *Any veterinarian that willfully fails to provide the treasurer of any locality with a copy of the rabies*  
 13707 *vaccination certificate or the information contained in such certificate may be subject to a civil penalty*  
 13708 *not to exceed \$10 per certificate. Monies raised pursuant to this subsection shall be placed in the*  
 13709 *locality's general fund for the purpose of animal control activities including spay or neuter programs.*

13710 *§ 3.2-6530. When license tax payable.*

13711 *A. The license tax as prescribed in § 3.2-6528 is due not later than 30 days after a dog or cat has*

13712 reached the age of four months, or not later than 30 days after an owner acquires a dog or cat four  
13713 months of age or older and each year thereafter.

13714 B. Licensing periods for individual dogs and cats may be equal to and may run concurrently with  
13715 the rabies vaccination effective period. Any kennel license tax prescribed pursuant to § 3.2-6528 shall be  
13716 due on January 1 and not later than January 31 of each year.

13717 § 3.2-6531. Displaying receipts; dogs to wear tags.

13718 Dog and cat license receipts shall be carefully preserved by the licensees and exhibited promptly on  
13719 request for inspection by any animal control officer or other officer. Dog license tags shall be securely  
13720 fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful  
13721 for the owner to permit any licensed dog four months old or older to run or roam at large at any time  
13722 without a license tag. The owner of the dog may remove the collar and license tag required by this  
13723 section when: (i) the dog is engaged in lawful hunting; (ii) the dog is competing in a dog show; (iii) the  
13724 dog has a skin condition that would be exacerbated by the wearing of a collar; (iv) the dog is confined;  
13725 or (v) the dog is under the immediate control of its owner.

13726 § 3.2-6532. Duplicate license tags.

13727 If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to  
13728 the treasurer or his agent who issued the original license for a duplicate license tag, presenting the  
13729 original license receipt. Upon affidavit of the owner or custodian before the treasurer or his agent that  
13730 the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag that the  
13731 owner or custodian shall immediately affix to the collar of the dog. The treasurer or his agent shall  
13732 endorse the number of the duplicate and the date issued on the face of the original license receipt. The  
13733 fee for a duplicate tag for any dog or cat shall be \$1.

13734 § 3.2-6533. Effect of dog or cat not wearing a license tag as evidence.

13735 Any dog or cat not wearing a collar bearing a valid license tag shall prima facie be deemed to be  
13736 unlicensed, and in any proceedings under this chapter the burden of proof of the fact that such dog or  
13737 cat has been licensed, or is otherwise not required to bear a tag at the time, shall be on the owner of  
13738 the dog or cat.

13739 § 3.2-6534. Disposition of funds.

13740 Unless otherwise provided by ordinance of the local governing body, the treasurer of each locality  
13741 shall keep all moneys collected by him for dog and cat license taxes in a separate account from all  
13742 other funds collected by him. The locality shall use the funds for the following purposes:

- 13743 1. The salary and expenses of the animal control officer and necessary staff;
- 13744 2. The care and maintenance of a pound;
- 13745 3. The maintenance of a rabies control program;
- 13746 4. Payments as a bounty to any person neutering or spaying a dog up to the amount of one year of  
13747 the license tax as provided by ordinance;
- 13748 5. Payments for compensation as provided in § 3.2-6553; and
- 13749 6. Efforts to promote sterilization of dogs and cats.

13750 Any part or all of any surplus remaining in such account on December 31 of any year may be  
13751 transferred by the governing body of such locality into the general fund of such locality.

13752 § 3.2-6535. Supplemental funds.

13753 Localities may supplement the dog and cat license tax fund with other funds as they consider  
13754 appropriate. Localities shall supplement the dog and cat license tax fund to the extent necessary to  
13755 provide for the salary and expenses of the animal control officer and staff and the care and  
13756 maintenance of a pound as provided in subdivisions 1 and 2 of § 3.2-6534.

13757 § 3.2-6536. Payment of license tax subsequent to summons.

13758 Payment of the license tax subsequent to a summons to appear before a court for failure to pay the  
13759 license tax within the time required shall not operate to relieve such owner from the penalties provided.

13760 Article 6.

13761 Authority of Local Governing Bodies.

13762 § 3.2-6537. Ordinances; penalties.

13763 The governing body of any locality may, by ordinance, require a person operating a pet shop or  
13764 operating as a dealer in companion animals to obtain a permit. Such local governing body may charge  
13765 no more than \$50 per year for such permit. The revenues derived therefrom shall be used for the  
13766 administration and enforcement of such ordinance.

13767 The aforementioned ordinance may provide: (i) that records be kept by the permittees as are deemed  
13768 necessary; (ii) for public hearing prior to issuance, renewal or revocation of any such permit; or (iii)  
13769 for the denial of issuance, denial of renewal or for the revocation of such permit for fraudulent  
13770 practices or inhumane treatment of the animals dealt with by the permittee.

13771 The ordinance may provide for either a criminal penalty not to exceed a Class 3 misdemeanor or a  
13772 civil penalty not to exceed \$500 for any violation of the ordinance. Any civil penalties collected shall be  
13773 deposited by the local treasurer pursuant to § 3.2-6534.



- 13774 § 3.2-6538. *Governing body of any locality may prohibit dogs from running at large.*  
 13775 *The governing body of any locality may prohibit the running at large of all or any category of dogs*  
 13776 *in all or any designated portion of such locality during such months as they may designate. Governing*  
 13777 *bodies may also require that dogs be confined, restricted or penned up during such periods. For the*  
 13778 *purpose of this section, a dog shall be deemed to run at large while roaming, running or self-hunting*  
 13779 *off the property of its owner or custodian and not under its owner's or custodian's immediate control.*  
 13780 *Any person who permits his dog to run at large, or remain unconfined, unrestricted or not penned up*  
 13781 *shall be deemed to have violated the provisions of this section.*
- 13782 § 3.2-6539. *Ordinance requiring dogs to be kept on leash.*  
 13783 *The governing body of any locality may adopt ordinances requiring that dogs within any such*  
 13784 *locality be kept on a leash or otherwise restrained and may, by resolution directed to the circuit court,*  
 13785 *request the court to order a referendum as to whether any such ordinance so adopted shall become*  
 13786 *effective. Such referendum shall be held and conducted, and the results thereof ascertained and certified*  
 13787 *in accordance with § 24.2-684. The court shall require the governing body to give appropriate notice of*  
 13788 *the time, place and subject matter of such referendum.*  
 13789 *The results of the referendum shall not be binding upon the governing body of the locality but may*  
 13790 *be used in ascertaining the sense of the voters.*
- 13791 § 3.2-6540. *Control of dangerous or vicious dogs; penalties.*  
 13792 *A. As used in this section:*  
 13793 *"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury*  
 13794 *on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or*  
 13795 *cat. When a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog*  
 13796 *shall not be deemed dangerous: (i) if no serious physical injury as determined by a licensed*  
 13797 *veterinarian has occurred to the dog or cat as a result of the attack or bite; (ii) if both animals are*  
 13798 *owned by the same person; (iii) if such attack occurs on the property of the attacking or biting dog's*  
 13799 *owner or custodian; or (iv) for other good cause as determined by the court. No dog shall be found to*  
 13800 *be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged*  
 13801 *with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog*  
 13802 *handling event.*  
 13803 *"Vicious dog" means a canine or canine crossbreed that has: (i) killed a person; (ii) inflicted serious*  
 13804 *injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or*  
 13805 *serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a*  
 13806 *previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by*  
 13807 *ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.*  
 13808 *B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or*  
 13809 *canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate*  
 13810 *of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear*  
 13811 *before a general district court at a specified time. The summons shall advise the owner of the nature of*  
 13812 *the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application*  
 13813 *for the issuance of a summons, he shall contact the local animal control officer and inform him of the*  
 13814 *location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious.*  
 13815 *The animal control officer shall confine the animal until such time as evidence shall be heard and a*  
 13816 *verdict rendered. If the animal control officer determines that the owner or custodian can confine the*  
 13817 *animal in a manner that protects the public safety, he may permit the owner or custodian to confine the*  
 13818 *animal until such time as evidence shall be heard and a verdict rendered. The court, through its*  
 13819 *contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If,*  
 13820 *after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the*  
 13821 *animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court*  
 13822 *finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with*  
 13823 *the provisions of § 3.2-6562. The procedure for appeal and trial shall be the same as provided by law*  
 13824 *for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of*  
 13825 *Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.*  
 13826 *C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely*  
 13827 *because it is a particular breed, nor is the ownership of a particular breed of canine or canine*  
 13828 *crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat,*  
 13829 *injury or damage was sustained by a person who was: (i) committing, at the time, a crime upon the*  
 13830 *premises occupied by the animal's owner or custodian; (ii) committing, at the time, a willful trespass*  
 13831 *upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or*  
 13832 *physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or*  
 13833 *assaulted the animal at other times. No police dog that was engaged in the performance of its duties as*  
 13834 *such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No*

13835 animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting  
 13836 itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a  
 13837 dangerous dog or a vicious dog.

13838 D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal  
 13839 guardian shall be responsible for complying with all requirements of this section.

13840 E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding,  
 13841 obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a  
 13842 fee of \$50, in addition to other fees that may be authorized by law. The local animal control officer or  
 13843 treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a  
 13844 dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears  
 13845 the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed  
 13846 annually for the same fee and in the same manner as the initial certificate was obtained. The animal  
 13847 control officer shall provide a copy of the dangerous dog registration certificate and verification of  
 13848 compliance to the State Veterinarian.

13849 F. All dangerous dog registration certificates or renewals thereof required to be obtained under this  
 13850 section shall only be issued to persons 18 years of age or older who present satisfactory evidence: (i) of  
 13851 the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed;  
 13852 and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside  
 13853 the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the  
 13854 proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof  
 13855 under this section shall not be issued a certificate or renewal thereof unless they present satisfactory  
 13856 evidence that: (i) their residence is and will continue to be posted with clearly visible signs warning  
 13857 both minors and adults of the presence of a dangerous dog on the property; and (ii) the animal has  
 13858 been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All  
 13859 certificates or renewals thereof required to be obtained under this section shall only be issued to  
 13860 persons who present satisfactory evidence that the owner has liability insurance coverage, to the value  
 13861 of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in  
 13862 lieu of liability insurance, to the value of at least \$100,000.

13863 G. While on the property of its owner, an animal found to be a dangerous dog shall be confined  
 13864 indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its  
 13865 escape or direct contact with or entry by minors, adults, or other animals. The structure shall be  
 13866 designed to provide the animal with shelter from the elements of nature. When off its owner's property,  
 13867 an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not  
 13868 to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it  
 13869 from biting a person or another animal.

13870 H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of  
 13871 Virginia Dangerous Dog Registry, as established under § 3.2-6542, within 45 days of such a finding by  
 13872 any appropriate court.

13873 The owner shall also cause the local animal control officer to be promptly notified of: (i) the names,  
 13874 addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and  
 13875 the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or  
 13876 dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification  
 13877 information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

13878 I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately,  
 13879 upon learning of same, cause the local animal control authority to be notified if the animal: (i) is loose  
 13880 or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any  
 13881 owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide  
 13882 written notice to the appropriate local animal control authority for the old address from which the  
 13883 animal has moved and the new address to which the animal has been moved.

13884 J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

13885 1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog  
 13886 pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and  
 13887 injures or kills a cat or dog that is a companion animal belonging to another person;

13888 2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog  
 13889 pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a  
 13890 human being or attacks a human being causing bodily injury; or

13891 3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or  
 13892 containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to  
 13893 show a reckless disregard for human life, and is the proximate cause of such dog or other animal  
 13894 attacking and causing serious bodily injury to any person.

13895 The provisions of this subsection shall not apply to any animal that, at the time of the acts  
 13896 complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a

13897 person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the  
 13898 performance of its duties at the time of the attack.

13899 K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply  
 13900 with the requirements of this section is guilty of a Class 1 misdemeanor.

13901 L. All fees collected pursuant to this section, less the costs incurred by the animal control authority  
 13902 in producing and distributing the certificates and tags required by this section, shall be paid into a  
 13903 special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any  
 13904 training course required under § 3.2-6556.

13905 M. The governing body of any locality may enact an ordinance parallel to this statute regulating  
 13906 dangerous and vicious dogs. No locality may impose a felony penalty for violation of such ordinances.

13907 § 3.2-6541. Authority to prohibit training of attack dogs.

13908 Fairfax County may enact an ordinance that prohibits persons from training dogs on residential  
 13909 property to attack. As used in this section, "attack" means to attack or respond aggressively, either with  
 13910 or without command. Any such ordinance shall exempt from its provisions the training of dogs owned  
 13911 by any person who resides on the property.

13912 § 3.2-6542. Establishment of Dangerous Dog Registry.

13913 The Commissioner shall establish the Commonwealth of Virginia Dangerous Dog Registry to be  
 13914 maintained by the Department, Office of Veterinary Services. Each owner of any canine or canine  
 13915 crossbreed found by any appropriate court to be a dangerous dog shall be required to register the  
 13916 animal as a dangerous dog within 45 days of such finding. The State Veterinarian shall receive, post,  
 13917 and maintain the information provided by the owner, animal control officers, and other such officials  
 13918 statewide on a website. All information collected for the Dangerous Dog Registry shall be available to  
 13919 animal control officers via the website. Registration shall include the name of the animal, a photograph,  
 13920 sex, age, weight, primary breed, secondary breed, color and markings, whether spayed or neutered, the  
 13921 acts that resulted in the dog being designated as dangerous and associated trial docket information,  
 13922 microchip or tattoo number, address where the animal is maintained, name of the owner, address of the  
 13923 owner, telephone numbers of the owner, and a statement that the owner has complied with the  
 13924 provisions of the dangerous dog order. The address of the owner along with the name and breed of the  
 13925 dangerous dog, the acts that resulted in the dog being deemed dangerous, and information necessary to  
 13926 access court records of the adjudication shall be available to the general public. By January 31 of each  
 13927 year, until such time as the dangerous dog is deceased, the owner shall submit a renewal registration  
 13928 that shall include all information contained in the original registration and any updates. The owner  
 13929 shall verify the information is accurate by annual resubmissions. The owner shall submit to the State  
 13930 Veterinarian a \$100 initial registration fee and a \$35 renewal registration fee. In the event that the  
 13931 dangerous dog is moved to a different location, or contact information for the owner changes in any  
 13932 way at any time, the owner shall submit a renewal containing the address of the new location or other  
 13933 updated information within 10 days of such move or change. There shall be no charge for any updated  
 13934 information provided between renewals. Any funds collected pursuant to this section shall be used by the  
 13935 State Veterinarian to maintain the registry and website. The website list shall be known as the Virginia  
 13936 Dangerous Dog Registry.

13937 Actions of the Department relating to the establishment, operation, and maintenance of the  
 13938 Commonwealth of Virginia Dangerous Dog Registry under this section shall be exempt from the  
 13939 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

13940 § 3.2-6543. Governing body of any locality may adopt certain ordinances.

13941 A. The governing body of any locality of the Commonwealth may adopt, and make more stringent,  
 13942 ordinances that parallel §§ 3.2-6521 through 3.2-6539, 3.2-6546 through 3.2-6555, 3.2-6562, 3.2-6569,  
 13943 3.2-6570, 3.2-6574 through 3.2-6580, and 3.2-6585 through 3.2-6590.

13944 Any funds collected pursuant to the enforcement of ordinances adopted pursuant to the provisions of  
 13945 this section may be used for the purpose of defraying the costs of local animal control, including efforts  
 13946 to promote sterilization of cats and dogs.

13947 B. Any locality may, by ordinance, establish uniform schedules of civil penalties for violations of  
 13948 specific provisions of ordinances adopted pursuant to this section. Civil penalties may not be imposed  
 13949 for violations of ordinances that parallel § 3.2-6570. Designation of a particular violation for a civil  
 13950 penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal  
 13951 misdemeanor. The schedule for civil penalties shall be uniform for each type of specified violation and  
 13952 the penalty for any one violation shall not be more than \$150. Imposition of civil penalties shall not  
 13953 preclude an action for injunctive, declaratory or other equitable relief. Moneys raised pursuant to this  
 13954 subsection shall be placed in the locality's general fund.

13955 An animal control officer or law-enforcement officer may issue a summons for a violation. Any  
 13956 person summoned or issued a ticket for a scheduled violation may make an appearance in person or in  
 13957 writing by mail to the department of finance or the treasurer of the locality issuing the summons or

13958 ticket prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial,  
 13959 admit liability, and pay the civil penalty established for the offense charged.

13960 § 3.2-6544. Regulation of keeping of animals and fowl.

13961 A. Any locality may, for the preservation of public health, regulate by ordinance the keeping of  
 13962 animals or fowl, other than dogs and cats, within a certain distance of residences or other buildings or  
 13963 wells, springs, streams, creeks, or brooks, and provide that all or certain of such animals shall not be  
 13964 kept within certain areas.

13965 B. Any locality may, by ordinance, prohibit cruelty to and abuse of animals and fowl; and may  
 13966 regulate or prohibit the running at large and the keeping of animals and fowl and provide for the  
 13967 impounding and confiscation of any such animal or fowl found at large or kept in violation of such  
 13968 regulations. Any such ordinance may require that owners of any exotic or poisonous animal found  
 13969 running at large pay a fee to cover the locality's actual cost in locating and capturing or otherwise  
 13970 disposing of the animal.

13971 § 3.2-6545. Regulation of sale of animals procured from animal shelters.

13972 Any locality that maintains or supports, in whole or in part, a pound or animal shelter may by  
 13973 ordinance provide that no person who acquires an animal from such pound or shelter shall be able to  
 13974 sell the animal within a period of six months from the time the animal is acquired from the shelter.  
 13975 Violation of the ordinance is a Class 1 misdemeanor.

13976 § 3.2-6546. County or city pounds; confinement and disposition of animals; affiliation with foster  
 13977 care providers; penalties; injunctive relief.

13978 A. For purposes of this section:

13979 "Animal" shall not include agricultural animals.

13980 "Rightful owner" means a person with a right of property in the animal.

13981 B. The governing body of each county or city shall maintain or cause to be maintained a pound and  
 13982 shall require dogs running at large without the tag required by § 3.2-6531 or in violation of an  
 13983 ordinance passed pursuant to § 3.2-6538 to be confined therein. Nothing in this section shall be  
 13984 construed to prohibit confinement of other companion animals in such a pound. The governing body of  
 13985 any county or city need not own the facility required by this section but may contract for its  
 13986 establishment with a private group or in conjunction with one or more other local governing bodies.  
 13987 The governing body shall require that:

13988 1. The pound shall be accessible to the public at reasonable hours during the week;

13989 2. The pound shall obtain a signed statement from each of its directors, operators, staff, or animal  
 13990 caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or  
 13991 abandonment, and each pound shall update such statement as changes occur;

13992 3. If a person contacts the pound inquiring about a lost companion animal, the pound shall advise  
 13993 the person if the companion animal is confined at the pound or if a companion animal of similar  
 13994 description is confined at the pound;

13995 4. The pound shall maintain a written record of the information on each companion animal  
 13996 submitted to the pound by an animal shelter in accordance with subsection D of § 3.2-6548 for a period  
 13997 of 30 days from the date the information is received by the pound. If a person contacts the pound  
 13998 inquiring about a lost companion animal, the pound shall check its records and make available to such  
 13999 person any information submitted by an animal shelter or allow such person inquiring about a lost  
 14000 animal to view the written records;

14001 5. The pound shall maintain a written record of the information on each companion animal  
 14002 submitted to the pound by a releasing agency other than a pound or animal shelter in accordance with  
 14003 subdivision F 2 of § 3.2-6549 for a period of 30 days from the date the information is received by the  
 14004 pound. If a person contacts the pound inquiring about a lost companion animal, the pound shall check  
 14005 its records and make available to such person any information submitted by such releasing agency or  
 14006 allow such person inquiring about a lost companion animal to view the written records; and

14007 6. The pound shall maintain a written record of the information on each companion animal  
 14008 submitted to the pound by an individual in accordance with subdivision A 2 of § 3.2-6551 for a period  
 14009 of 30 days from the date the information is received by the pound. If a person contacts the pound  
 14010 inquiring about a lost companion animal, the pound shall check its records and make available to such  
 14011 person any information submitted by the individual or allow such person inquiring about a lost  
 14012 companion animal to view the written records.

14013 C. An animal confined pursuant to this section shall be kept for a period of not less than five days,  
 14014 such period to commence on the day immediately following the day the animal is initially confined in  
 14015 the facility, unless sooner claimed by the rightful owner thereof.

14016 The operator or custodian of the pound shall make a reasonable effort to ascertain whether the  
 14017 animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on  
 14018 the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful  
 14019 owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the

14020 pound shall make a reasonable effort to notify the owner of the animal's confinement within the next 48  
14021 hours following its confinement.

14022 If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be  
14023 charged with the actual expenses incurred in keeping the animal impounded.

14024 D. If an animal confined pursuant to this section has not been claimed upon expiration of the  
14025 appropriate holding period as provided by subsection C, it shall be deemed abandoned and become the  
14026 property of the pound.

14027 Such animal may be euthanized in accordance with the methods approved by the State Veterinarian  
14028 or disposed of by the methods set forth in subdivisions 1 through 5. No pound shall release more than  
14029 two animals or a family of animals during any 30-day period to any one person under subdivisions 2, 3,  
14030 or 4.

14031 1. Release to any humane society, animal shelter, or other releasing agency within the  
14032 Commonwealth, provided that each humane society, animal shelter, or other releasing agency obtains a  
14033 signed statement from each of its directors, operators, staff, or animal caregivers specifying that each  
14034 individual has never been convicted of animal cruelty, neglect, or abandonment and updates such  
14035 statements as changes occur;

14036 2. Adoption by a resident of the county or city where the pound is operated and who will pay the  
14037 required license fee, if any, on such animal, provided that such resident has read and signed a  
14038 statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

14039 3. Adoption by a resident of an adjacent political subdivision of the Commonwealth, if the resident  
14040 has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect,  
14041 or abandonment;

14042 4. Adoption by any other person, provided that such person has read and signed a statement  
14043 specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided  
14044 that no dog or cat may be adopted by any person who is not a resident of the county or city where the  
14045 pound is operated, or of an adjacent political subdivision, unless the dog or cat is first sterilized, and  
14046 the pound may require that the sterilization be done at the expense of the person adopting the dog or  
14047 cat; or

14048 5. Release for the purposes of adoption or euthanasia only, to an animal shelter, or any other  
14049 releasing agency located in and lawfully operating under the laws of another state, provided that such  
14050 animal shelter, or other releasing agency: (i) maintains records that would comply with § 3.2-6557; (ii)  
14051 requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its  
14052 directors, operators, staff, and animal caregivers specifying that each individual has never been  
14053 convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur;  
14054 and (iv) has provided to the pound, animal shelter, or other releasing agency within the Commonwealth  
14055 a statement signed by an authorized representative specifying the entity's compliance with clauses (i)  
14056 through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary  
14057 in accordance with the provisions of this chapter.

14058 For purposes of recordkeeping, release of an animal by a pound to a pound, animal shelter or other  
14059 releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized,  
14060 the responsibility for sterilizing the animal transfers to the receiving entity.

14061 Any proceeds deriving from the gift, sale, or delivery of such animals shall be paid directly to the  
14062 treasurer of the locality. Any proceeds deriving from the gift, sale, or delivery of such animals by an  
14063 animal shelter or other releasing agency shall be paid directly to the clerk or treasurer of the animal  
14064 shelter or other releasing agency for the expenses of the society and expenses incident to any agreement  
14065 concerning the disposing of such animal. No part of the proceeds shall accrue to any individual except  
14066 for the aforementioned purposes.

14067 E. Nothing in this section shall prohibit the immediate euthanasia of a critically injured, critically ill,  
14068 or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this  
14069 chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian.

14070 F. Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed  
14071 in subdivisions 1 through 5 of subsection D of an animal that has been released to a pound, animal  
14072 shelter, other releasing agency, or animal control officer by the animal's rightful owner after the rightful  
14073 owner has read and signed a statement: (i) surrendering all property rights in such animal; (ii) stating  
14074 that no other person has a right of property in the animal; and (iii) acknowledging that the animal may  
14075 be immediately euthanized or disposed of in accordance with subdivisions 1 through 5 of subsection D.

14076 G. Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo,  
14077 or other form of identification that, based on the written statement of a disinterested person, exhibits  
14078 behavior that poses a risk of physical injury to any person confining the animal, from being euthanized  
14079 after being kept for a period of not less than three days, at least one of which shall be a full business  
14080 day, such period to commence on the day the animal is initially confined in the facility, unless sooner

14081 *claimed by the rightful owner. The statement of the disinterested person shall be kept with the animal as*  
14082 *required by § 3.2-6557. For purposes of this subsection, a disinterested person shall not include a*  
14083 *person releasing or reporting the animal.*

14084 *H. No pound shall place a companion animal in a foster home with a foster care provider unless the*  
14085 *foster care provider has read and signed a statement specifying that he has never been convicted of*  
14086 *animal cruelty, neglect, or abandonment, and each pound shall update such statement as changes occur.*  
14087 *The pound shall maintain the original statement and any updates to such statement in accordance with*  
14088 *this chapter and for at least so long as the pound has an affiliation with the foster care provider.*

14089 *I. A pound that places a companion animal in a foster home with a foster care provider shall ensure*  
14090 *that the foster care provider complies with § 3.2-6503.*

14091 *J. If a pound finds a direct and immediate threat to a companion animal placed with a foster care*  
14092 *provider, it shall report its findings to the animal control agency in the locality where the foster care*  
14093 *provider is located.*

14094 *K. The governing body shall require that the pound be operated in accordance with regulations*  
14095 *issued by the Board. If this chapter or such regulations are violated, the locality may be assessed a civil*  
14096 *penalty by the Board or its designee in an amount that does not exceed \$1,000 per violation. Each day*  
14097 *of the violation is a separate offense. In determining the amount of any civil penalty, the Board or its*  
14098 *designee shall consider: (i) the history of previous violations at the pound; (ii) whether the violation has*  
14099 *caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of the locality*  
14100 *to achieve compliance after notification of the violation. All civil penalties assessed under this section*  
14101 *shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth.*  
14102 *Such civil penalties shall be paid into a special fund in the state treasury to the credit of the*  
14103 *Department to be used in carrying out the purposes of this chapter.*

14104 *L. If this chapter or any laws governing pounds are violated, the Commissioner may bring an action*  
14105 *to enjoin the violation or threatened violation of this chapter or the regulations pursuant thereto*  
14106 *regarding pounds, in the circuit court where the pound is located. The Commissioner may request the*  
14107 *Attorney General to bring such an action, when appropriate.*

14108 *§ 3.2-6547. Acceptance of animals for research or experimentation; prohibition.*

14109 *No person shall use or accept for the purpose of medical research or experimentation any animal*  
14110 *bearing a tag, license, or tattooed identification, unless the individual who owns such animal consents*  
14111 *thereto in writing.*

14112 *§ 3.2-6548. Animal shelters; confinement and disposition of animals; affiliation with foster care*  
14113 *providers; penalties; injunctive relief.*

14114 *A. An animal shelter may confine and dispose of animals in accordance with the provisions of*  
14115 *subsections B through G of § 3.2-6546.*

14116 *B. Each animal shelter shall obtain a signed statement from each of its directors, operators, staff,*  
14117 *and animal caregivers specifying that the individual has never been convicted of animal cruelty, neglect,*  
14118 *or abandonment, and each animal shelter shall update such statement as changes occur.*

14119 *C. The State Veterinarian or his representative shall inspect an animal shelter prior to the animal*  
14120 *shelter confining or disposing of animals pursuant to this section. The animal shelter shall meet the*  
14121 *requirements of all laws with regard to confinement and disposition of animals before the animal shelter*  
14122 *is approved to receive animals and provide a reasonable and comfortable climate appropriate for the*  
14123 *age, species, condition, size, and type of animal.*

14124 *D. An animal shelter that confines an animal that has not been received from its owner shall,*  
14125 *pursuant to this section, transmit a description of the animal including at least species, color, breed,*  
14126 *size, sex, and other identification or markings and where the animal was found, and its contact*  
14127 *information, including its name, address, and telephone number, to the pound in the county or city*  
14128 *where the animal was found within 48 hours of the animal shelter receiving the animal. An animal*  
14129 *shelter that confines and disposes of animals pursuant to this subsection shall be accessible to the*  
14130 *public at reasonable hours, shall have its telephone number and address listed in a telephone directory,*  
14131 *and shall post its contact information, including at least its name, address, and telephone number, in the*  
14132 *pound in the locality where the animal shelter is located.*

14133 *E. For purposes of recordkeeping, release of an animal by an animal shelter to a pound, animal*  
14134 *shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is*  
14135 *not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.*

14136 *F. No animal shelter shall place a companion animal in a foster home with a foster care provider*  
14137 *unless the foster care provider has read and signed a statement specifying that he has never been*  
14138 *convicted of animal cruelty, neglect, or abandonment, and the animal shelter shall update the statement*  
14139 *as changes occur. The animal shelter shall maintain the original statement and any updates to such*  
14140 *statement in accordance with this chapter and for at least so long as the animal shelter has an*  
14141 *affiliation with the foster care provider.*

14142 *G. An animal shelter that places a companion animal in a foster home with a foster care provider*

14143 shall ensure that the foster care provider complies with § 3.2-6503.

14144 H. If an animal shelter finds a direct and immediate threat to a companion animal placed with a  
14145 foster care provider, it shall report its findings to the animal control agency in the locality where the  
14146 foster care provider is located.

14147 I. No animal shelter shall be operated in violation of any local zoning ordinance.

14148 J. An animal shelter that confines and disposes of animals pursuant to this section shall be operated  
14149 in accordance with this chapter. If this chapter is violated, the animal shelter may be assessed a civil  
14150 penalty by the Board or its designee in an amount that does not exceed \$1,000 per violation. Each day  
14151 of the violation is a separate offense. In determining the amount of any civil penalty, the Board or its  
14152 designee shall consider: (i) the history of previous violations at the animal shelter; (ii) whether the  
14153 violation has caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of  
14154 the animal shelter to achieve compliance after notification of the violation. All civil penalties assessed  
14155 under this section shall be recovered in a civil action brought by the Attorney General in the name of  
14156 the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the  
14157 credit of the Department to be used in carrying out the purposes of this chapter.

14158 K. If this chapter or any laws governing animal shelters are violated, the Commissioner may bring  
14159 an action to enjoin the violation or threatened violation of this chapter or the regulations pursuant  
14160 thereto regarding animal shelters, in the circuit court where the animal shelter is located. The  
14161 Commissioner may request the Attorney General to bring such an action, when appropriate.

14162 § 3.2-6549. Releasing agencies other than pounds or animal shelters; confinement and disposition of  
14163 companion animals; recordkeeping; affiliation with foster care providers; penalties.

14164 A. A releasing agency other than a pound or animal shelter:

14165 1. May confine and dispose of companion animals in accordance with subsections B through G of  
14166 § 3.2-6546; and

14167 2. Shall keep accurate records of each companion animal received for two years from the date of  
14168 disposition of the companion animal. Records shall: (i) include a description of the companion animal  
14169 including species, color, breed, sex, approximate weight, age, reason for release, owner's or finder's  
14170 name, address and telephone number, license number or other identifying tags or markings, as well as  
14171 disposition of the companion animal; and (ii) be made available upon request to the Department, animal  
14172 control officers, and law-enforcement officers at mutually agreeable times. A releasing agency other  
14173 than a pound or animal shelter shall submit a summary of such records to the State Veterinarian  
14174 annually in a format prescribed by him, wherein a post office box may be substituted for a home  
14175 address.

14176 3. For purposes of recordkeeping, release of a companion animal by a releasing agency to a pound,  
14177 animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the  
14178 animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

14179 B. Each releasing agency other than a pound or animal shelter shall obtain a signed statement from  
14180 each of its directors, operators, staff, or animal caregivers specifying that each individual has never  
14181 been convicted of animal cruelty, neglect, or abandonment, and each such releasing agency shall update  
14182 such statement as changes occur.

14183 C. No releasing agency other than a pound or animal shelter shall place a companion animal in a  
14184 foster home with a foster care provider unless the foster care provider has read and signed a statement  
14185 specifying that the foster care provider has never been convicted of animal cruelty, neglect, or  
14186 abandonment, and such releasing agency shall update the statement as changes occur. A releasing  
14187 agency other than a pound or animal shelter shall maintain the original statement and any updates to  
14188 such statement for so long as the releasing agency has an affiliation with the foster care provider.

14189 D. A releasing agency other than a pound or animal shelter that places a companion animal in a  
14190 foster home with a foster care provider shall ensure that the foster care provider complies with  
14191 § 3.2-6503.

14192 E. If a releasing agency other than a pound or animal shelter finds a direct and immediate threat to  
14193 a companion animal placed with a foster care provider, it shall report its findings to the animal control  
14194 agency in the area where the foster care provider is located.

14195 F. Any releasing agency other than a pound or animal shelter that finds a companion animal or  
14196 receives a companion animal that has not been released by its owner and: (i) provides care or  
14197 safekeeping; or (ii) takes possession of such companion animal shall, within 48 hours:

14198 1. Make a reasonable attempt to notify the owner of the companion animal, if the owner can be  
14199 ascertained from any tag, license, collar, tattoo, or other identification or markings, or if the owner of  
14200 the companion animal is otherwise known to the releasing agency; and

14201 2. Notify the pound that serves the locality where the companion animal was found and provide to  
14202 the pound contact information including at least a name and a contact telephone number, a description  
14203 of the companion animal including at least species, breed, sex, size, color, information from any tag,

14204 license, collar, tattoo, or other identification or markings, and the location where the companion animal  
14205 was found.

14206 G. A releasing agency other than a pound or animal shelter shall comply with the provisions of  
14207 § 3.2-6503.

14208 H. No releasing agency other than a pound or animal shelter shall be operated in violation of any  
14209 local zoning ordinance.

14210 I. A releasing agency other than a pound or animal shelter that violates any provision of this  
14211 section, other than subsection G, may be subject to a civil penalty not to exceed \$250.

14212 § 3.2-6550. Requirements for foster homes; penalty.

14213 In addition to any other requirements of this chapter, foster homes shall be subject to the following:

14214 1. No foster home shall be operated in violation of any local zoning ordinance; and

14215 2. No foster home shall keep more than 50 companion animals on-site at one time.

14216 Any foster home found in violation of this section may be subject to a civil penalty not to exceed  
14217 \$250.

14218 § 3.2-6551. Notification by individuals finding companion animals; penalty.

14219 A. Any individual who finds a companion animal and: (i) provides care or safekeeping; or (ii)  
14220 retains a companion animal in such a manner as to control its activities shall, within 48 hours:

14221 1. Make a reasonable attempt to notify the owner of the companion animal, if the owner can be  
14222 ascertained from any tag, license, collar, tattoo, or other form of identification or markings, or if the  
14223 owner of the animal is otherwise known to the individual; and

14224 2. Notify the pound that serves the locality where the companion animal was found and provide to  
14225 the pound contact information including at least a name and a contact telephone number, a description  
14226 of the animal including information from any tag, license, collar, tattoo, or other identification or  
14227 markings, and the location where the companion animal was found.

14228 B. If an individual finds a companion animal and: (i) provides care or safekeeping; or (ii) retains a  
14229 companion animal in such a manner as to control its activities, the individual shall comply with the  
14230 provisions of § 3.2-6503.

14231 C. Any individual who violates this section may be subject to a civil penalty not to exceed \$50 per  
14232 companion animal.

14233 § 3.2-6552. Dogs killing, injuring or chasing livestock or poultry.

14234 It shall be the duty of any animal control officer or other officer who may find a dog in the act of  
14235 killing or injuring livestock or poultry to kill such dog forthwith whether such dog bears a tag or not.

14236 Any person finding a dog committing any of the depredations mentioned in this section shall have the  
14237 right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing

14238 livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to  
14239 the livestock. Any court shall have the power to order the animal control officer or other officer to kill

14240 any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third  
14241 time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel

14242 the owner, custodian, or harbinger of the dog to produce the dog.

14243 Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall  
14244 be empowered to seize such dog solely for the purpose of examining such dog in order to determine

14245 whether it committed any of the depredations mentioned herein. Any animal control officer or other  
14246 person who has reason to believe that any dog is killing livestock, or committing any of the

14247 depredations mentioned in this section, shall apply to a magistrate of the locality wherein the dog may  
14248 be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general

14249 district court at a time and place named therein, at which time evidence shall be heard. If it shall  
14250 appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this

14251 section, the district court shall order that the dog be: (i) killed immediately by the animal control officer  
14252 or other officer designated by the court; or (ii) removed to another state that does not border on the

14253 Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the  
14254 Commonwealth that is later found in the Commonwealth shall be ordered by a court to be killed

14255 immediately.

14256 § 3.2-6553. Compensation for livestock and poultry killed by dogs.

14257 Any person who has any livestock or poultry killed or injured by any dog not his own shall be  
14258 entitled to receive as compensation the fair market value of such livestock or poultry not to exceed \$400

14259 per animal or \$10 per fowl if: (i) the claimant has furnished evidence within 60 days of discovery of the  
14260 quantity and value of the dead or injured livestock and the reasons the claimant believes that death or

14261 injury was caused by a dog; (ii) the animal control officer or other officer shall have been notified of  
14262 the incident within 72 hours of its discovery; and (iii) the claimant first has exhausted his legal

14263 remedies against the owner, if known, of the dog doing the damage for which compensation under this  
14264 section is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an

14265 execution has been returned unsatisfied.



14266 *Local jurisdictions may by ordinance waive the requirements of (ii) or (iii) or both provided that the*  
 14267 *ordinance adopted requires that the animal control officer has conducted an investigation and that his*  
 14268 *investigation supports the claim. Upon payment under this section the local governing body shall be*  
 14269 *subrogated to the extent of compensation paid to the right of action to the owner of the livestock or*  
 14270 *poultry against the owner of the dog and may enforce the same in an appropriate action at law.*

14271 *§ 3.2-6554. Disposal of dead companion animals.*

14272 *The owner of any companion animal shall forthwith cremate, bury, or sanitarily dispose of the*  
 14273 *animal upon its death. If, after notice, any owner fails to do so, the animal control officer or other*  
 14274 *officer shall bury or cremate the companion animal, and he may recover on behalf of the local*  
 14275 *jurisdiction from the owner his cost for this service.*

14276 *Article 7.*

14277 *Animal Control Officers and Humane Investigators.*

14278 *§ 3.2-6555. Position of animal control officer created.*

14279 *The governing body of each county or city shall, or each town may, employ an officer to be known*  
 14280 *as the animal control officer who shall have the power to enforce this chapter, all ordinances enacted*  
 14281 *pursuant to this chapter and all laws for the protection of domestic animals. The governing body may*  
 14282 *also employ one or more deputy animal control officers to assist the animal control officer in the*  
 14283 *performance of his duties. Animal control officers and deputy animal control officers shall have*  
 14284 *knowledge of the animal control and protection laws of the Commonwealth that they are required to*  
 14285 *enforce. When in uniform or upon displaying a badge or other credentials of office, animal control*  
 14286 *officers and deputy animal control officers shall have the power to issue a summons or obtain a felony*  
 14287 *warrant as necessary, providing the execution of such warrant shall be carried out by any*  
 14288 *law-enforcement officer as defined in § 9.1-101, to any person found in the act of violating any such law*  
 14289 *or any ordinance enacted pursuant to such law of the locality where the animal control officer or*  
 14290 *deputy animal control officer is employed. The animal control officer and the deputy animal control*  
 14291 *officers shall be paid as the governing body of each locality shall prescribe.*

14292 *Any locality where an animal control officer or deputy animal control officers have been employed*  
 14293 *may contract with one or more additional localities for enforcement of animal protection and control*  
 14294 *laws by the animal control officers or deputy animal control officers. Any such contract may provide*  
 14295 *that the locality employing the animal control officer or deputy animal control officers shall be*  
 14296 *reimbursed a portion of the salary and expenses of the animal control officer or deputy animal control*  
 14297 *officers.*

14298 *Every locality employing an animal control officer shall submit to the State Veterinarian, on a form*  
 14299 *provided by him, information concerning the employment and training status of the animal control*  
 14300 *officers employed by the locality. The State Veterinarian may require that the locality notify him of any*  
 14301 *change in such information.*

14302 *§ 3.2-6556. Training of animal control officers.*

14303 *A. Every locality employing animal control officers shall require that every animal control officer*  
 14304 *and deputy animal control officer completes the following training:*

14305 *1. Within two years from the date of hire, a basic animal control course that has been approved by*  
 14306 *the State Veterinarian. The basic animal control course shall include training in recognizing suspected*  
 14307 *child abuse and neglect and information on how complaints may be filed and shall be approved and*  
 14308 *implemented; and*

14309 *2. Every three years, additional training approved by the State Veterinarian, 15 hours of which shall*  
 14310 *be training in animal control and protection.*

14311 *The State Veterinarian shall develop criteria to be used in approving training courses and shall*  
 14312 *provide an opportunity for public comment on proposed criteria before the final criteria are adopted.*

14313 *Subdivision 1 shall not apply to animal control officers or deputy animal control officers hired*  
 14314 *before July 1, 1998. The State Veterinarian may grant exemptions from the requirements of subdivision*  
 14315 *1 to animal control officers hired on or after July 1, 1998, based on the animal control officer's*  
 14316 *previous training.*

14317 *The State Veterinarian shall work to ensure the availability of these training courses through*  
 14318 *regional criminal justice training academies or other entities as approved by him. Based on information*  
 14319 *provided by authorized training entities, the State Veterinarian shall maintain the training records for*  
 14320 *all animal control officers for the purpose of documenting and ensuring that they are in compliance*  
 14321 *with this subsection.*

14322 *B. Upon cause shown by a locality, the State Veterinarian may grant additional time during which*  
 14323 *the training required by subsection A may be completed by an animal control officer for the locality.*

14324 *C. Any animal control officer that fails to complete the training required by subsection A shall be*  
 14325 *removed from office, unless the State Veterinarian has granted additional time as provided in subsection*  
 14326 *B.*

14327 § 3.2-6557. *Animal control officers and humane investigators; limitations; records; penalties.*

14328 A. *No animal control officer, humane investigator, humane society or custodian of any pound or*  
 14329 *animal shelter shall: (i) obtain the release or transfer of an animal by the animal's owner to such*  
 14330 *animal control officer, humane investigator, humane society or custodian for personal gain; or (ii) give*  
 14331 *or sell or negotiate for the gift or sale to any individual, pet shop, dealer, or research facility of any*  
 14332 *animal that may come into his custody in the course of carrying out his official assignments. No animal*  
 14333 *control officer, humane investigator or custodian of any pound or animal shelter shall be granted a*  
 14334 *dealer's license. Violation of this subsection is a Class I misdemeanor. Nothing in this section shall*  
 14335 *preclude any animal control officer or humane investigator from lawfully impounding any animal*  
 14336 *pursuant to § 3.2-6569.*

14337 B. *An animal control officer, law-enforcement officer, humane investigator or custodian of any pound*  
 14338 *or animal shelter, upon taking custody of any animal in the course of his official duties, or any*  
 14339 *representative of a humane society, upon obtaining custody of any animal on behalf of the society, shall*  
 14340 *immediately make a record of the matter. Such record shall include:*

14341 1. *The date on which the animal was taken into custody;*

14342 2. *The date of the making of the record;*

14343 3. *A description of the animal including the animal's species, color, breed, sex, approximate age and*  
 14344 *approximate weight;*

14345 4. *The reason for taking custody of the animal and the location where custody was taken;*

14346 5. *The name and address of the animal's owner, if known;*

14347 6. *Any license or rabies tag, tattoo, collar or other identification number carried by or appearing on*  
 14348 *the animal; and*

14349 7. *The disposition of the animal.*

14350 *Records required by this subsection shall be maintained for at least five years, and shall be available*  
 14351 *for public inspection upon request. A summary of such records shall be submitted annually to the State*  
 14352 *Veterinarian in a format prescribed by him.*

14353 C. *Any animal control officer or custodian of any pound who violates any provision of this chapter*  
 14354 *that relates to the seizure, impoundment and custody of animals by an animal control officer may be*  
 14355 *subject to suspension or dismissal from his position.*

14356 D. *Custodians and animal control officers engaged in the operation of a pound shall be required to*  
 14357 *have knowledge of the laws of the Commonwealth governing animals, including this chapter, as well as*  
 14358 *basic animal care.*

14359 § 3.2-6558. *Humane investigators; qualifications; appointment; term.*

14360 A. *A circuit court may reappoint any person as a humane investigator for any locality within its*  
 14361 *jurisdiction if the person:*

14362 1. *Was appointed as a humane investigator prior to July 1, 2003; and*

14363 2. *Has never been convicted of animal cruelty or neglect, any felony, or any crime of moral*  
 14364 *turpitude according to a criminal background check, which shall be performed by the attorney for the*  
 14365 *Commonwealth at the expense of the person seeking the appointment.*

14366 B. *A circuit court may appoint a person to fill a vacancy in that jurisdiction created when a humane*  
 14367 *investigator who was appointed prior to July 1, 2003, is no longer willing or eligible to be a humane*  
 14368 *investigator, provided the person seeking appointment:*

14369 1. *Has received a written recommendation from the administrative entity that oversees animal control*  
 14370 *in the locality where the humane investigator seeks appointment;*

14371 2. *Has never been convicted of animal cruelty or neglect, any felony, or any crime of moral*  
 14372 *turpitude according to a criminal background check, which shall be performed by the attorney for the*  
 14373 *Commonwealth at the expense of the person seeking the appointment; and*

14374 3. *Has completed a basic animal control course approved by the State Veterinarian pursuant to*  
 14375 *§ 3.2-6556.*

14376 C. *A person residing outside the Commonwealth may be appointed as a humane investigator only if*  
 14377 *he is employed by a humane society located within the locality where he is seeking appointment.*

14378 D. *Reappointments of humane investigators shall be for terms of three years. Each humane*  
 14379 *investigator shall, during each term for which he is appointed, complete 15 hours of training in animal*  
 14380 *care and protection approved for animal control officers. If a humane investigator is appointed to a*  
 14381 *succeeding term before or within 30 days after his current term expires, a criminal background check*  
 14382 *shall not be required. If a humane investigator's term expires and he is not appointed to a succeeding*  
 14383 *term before or within 30 days after his current term expires, the humane investigator shall not be*  
 14384 *appointed to another term.*

14385 § 3.2-6559. *Powers and duties of humane investigators.*

14386 A. *Any humane investigator may, within the locality where he has been appointed, investigate*  
 14387 *violations of laws and ordinances regarding care and treatment of animals and disposal of dead*  
 14388 *animals.*

14389 *B. Each humane investigator shall carry during the performance of his powers and duties under this*  
 14390 *chapter an identification card issued by the locality where the humane investigator is appointed. The*  
 14391 *identification card shall include the following information regarding the humane investigator:*

- 14392 1. *His full name;*
- 14393 2. *The locality where he has been appointed;*
- 14394 3. *The name of the circuit court that appointed him;*
- 14395 4. *The signature of the circuit court judge that appointed him;*
- 14396 5. *A photograph of his face; and*
- 14397 6. *The date of expiration of his appointment.*

14398 *C. Each humane investigator shall record on a form approved by the administrative entity that*  
 14399 *oversees animal control every investigation he performs, maintain such record for five years, and make*  
 14400 *such record available upon request to any law-enforcement officer, animal control officer or State*  
 14401 *Veterinarian's representative. Each humane investigator shall file quarterly a report summarizing such*  
 14402 *records with the administrative agency that oversees animal control on an approved form. A humane*  
 14403 *investigator's appointment may be revoked as provided in § 3.2-6561 if he fails to file such report.*

14404 § 3.2-6560. *Expenses of humane investigators.*

14405 *Neither the appointment of any humane investigator, nor the performance of any service or duty by*  
 14406 *him, shall require any locality or the Commonwealth to pay any cost or expense incurred by or on*  
 14407 *behalf of a humane investigator. Any locality may reimburse any humane investigator appointed for that*  
 14408 *locality for reasonable expenses incurred as the result of a specific request for services from the*  
 14409 *locality.*

14410 § 3.2-6561. *Revocation of appointment of humane investigators.*

14411 *A. Upon a motion by the attorney for the Commonwealth, the circuit court that appointed a humane*  
 14412 *investigator may revoke his appointment if he is no longer able to perform the duties of a humane*  
 14413 *investigator; has been convicted of any felony, Class 1 misdemeanor, or a violation of any provision of*  
 14414 *this chapter or any other law regarding animals; or for good cause shown. The court shall notify the*  
 14415 *administrative entity that oversees animal control in the locality where the humane investigator was*  
 14416 *appointed of such revocation.*

14417 *B. Any law-enforcement officer may investigate any allegation that a humane investigator has*  
 14418 *violated this chapter and report his findings and recommendations to the attorney for the*  
 14419 *Commonwealth.*

14420 § 3.2-6562. *Capturing, confining, and euthanizing companion animals by animal control officers;*  
 14421 *approval of drugs used.*

14422 *It shall be the duty of the animal control officer or any other officer to capture and confine any*  
 14423 *companion animal of unknown ownership found running at large on which the license fee has not been*  
 14424 *paid. Following the expiration of the holding period prescribed in § 3.2-6546, the animal control officer*  
 14425 *or other officer may deliver such companion animal to any person in his jurisdiction who will pay the*  
 14426 *required license fee on such companion animal. Prior to disposition by euthanasia or otherwise, all the*  
 14427 *provisions of § 3.2-6546 shall have been complied with. For all companion animals not otherwise*  
 14428 *disposed of as provided for in this chapter, it shall be the duty of the animal control officer or any*  
 14429 *other officer to euthanize such companion animals. Any person, animal control officer, or other officer*  
 14430 *euthanizing a companion animal under this chapter shall cremate, bury, or sanitarily dispose of the*  
 14431 *same.*

14432 *All drugs and drug administering equipment used by animal control officers or other officers to*  
 14433 *capture companion animals pursuant to this chapter shall have been approved by the State Veterinarian.*

14434 § 3.2-6563. *When animals to be euthanized; procedure.*

14435 *Any humane investigator may lawfully cause to be euthanized any animal in his charge or found*  
 14436 *abandoned or not properly cared for when, in the judgment of the humane investigator and two*  
 14437 *reputable citizens called to view the same in his presence, and who shall give their written certificate,*  
 14438 *the animal appears to be injured, disabled or diseased, past recovery, or the injury, disease or disability*  
 14439 *is such that a reasonable owner would cause the animal to be euthanized.*

14440 *Any humane investigator shall make every reasonable effort immediately to notify the owner of the*  
 14441 *animal that the humane investigator intends for the animal to be euthanized. The owner shall have a*  
 14442 *right to select one of the two reputable citizens called to view the animal and give written certificate of*  
 14443 *the animal's condition. In no event shall the determination as to disposition of the animal be delayed*  
 14444 *beyond 48 hours after such humane investigator first decides the animal should be euthanized. In the*  
 14445 *event that the two citizens called to give such certificate are unable to agree, they shall select a third*  
 14446 *reputable citizen and his decision shall be final.*

#### Article 8.

#### Search, Seizure, Impounding, and Enforcement.

14447 § 3.2-6564. *Complaint of suspected violation; investigation.*

14450 A. Upon receiving a complaint of a suspected violation of this chapter, any ordinance enacted  
 14451 pursuant to this chapter or any law for the protection of domestic animals, any animal control officer,  
 14452 law-enforcement officer, or State Veterinarian's representative may, for the purpose of investigating the  
 14453 allegations of the complaint, enter upon, during business hours, any business premises, including any  
 14454 place where animals or animal records are housed or kept, of any dealer, pet shop, groomer, or  
 14455 boarding establishment. Upon receiving a complaint of a suspected violation of any law or ordinance  
 14456 regarding care or treatment of animals or disposal of dead animals, any humane investigator may, for  
 14457 the purpose of investigating the allegations of the complaint, enter upon, during business hours, any  
 14458 business premises, including any place where animals or animal records are housed or kept, of any  
 14459 dealer, pet shop, groomer, or boarding establishment.

14460 Upon obtaining a warrant as provided for in § 3.2-6568, the law-enforcement officer, animal control  
 14461 officer, State Veterinarian's representative, or humane investigator may enter upon any other premises  
 14462 where the animal or animals described in the complaint are housed or kept. Attorneys for the  
 14463 Commonwealth and law-enforcement officials shall provide such assistance as may be required in the  
 14464 conduct of such investigations.

14465 B. If the investigation discloses that a violation of § 3.2-6503 has occurred, the investigating official  
 14466 shall notify the owner or custodian of the complaint and of what action is necessary to comply with this  
 14467 chapter.

14468 § 3.2-6565. Impoundment; expenses; lien; disposition of animal.

14469 When an animal control officer, humane investigator, law-enforcement officer or State Veterinarian's  
 14470 representative finds that an apparent violation of this chapter has rendered an animal in such a  
 14471 condition as to constitute a direct and immediate threat to its life, safety or health that the owner or  
 14472 custodian has failed to remedy, such animal control officer, humane investigator, law-enforcement  
 14473 officer or State Veterinarian's representative may impound the animal pursuant to § 3.2-6569 in a  
 14474 facility that will provide the elements of good care as set forth in § 3.2-6503 and shall then proceed to  
 14475 take such steps as are required to dispose of the animal pursuant to § 3.2-6569.

14476 § 3.2-6566. Preventing cruelty to animals; interference; penalty.

14477 Each animal control officer, humane investigator or State Veterinarian's representative shall interfere  
 14478 to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall  
 14479 interfere with or obstruct or resist any animal control officer, humane investigator or State  
 14480 Veterinarian's representative in the discharge of his rights, powers, and duties as authorized and  
 14481 prescribed by law is guilty of a Class 4 misdemeanor.

14482 § 3.2-6567. Enforcement authority.

14483 All law-enforcement officers in the Commonwealth and State Veterinarian's representatives shall  
 14484 enforce the provisions of this chapter to the same extent other laws in the Commonwealth are enforced.

14485 § 3.2-6568. Power of search for violations of statutes against cruelty to animals.

14486 When a sworn complaint is made to any proper authority by any animal control officer, humane  
 14487 investigator, law-enforcement officer or State Veterinarian's representative that the complainant believes  
 14488 and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being,  
 14489 or are about to be violated in any particular building or place, such authority, if satisfied that there is  
 14490 reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff or police  
 14491 officer, to search the building or place. No search shall be made after sunset unless specially authorized  
 14492 by the authority upon satisfactory cause shown.

14493 § 3.2-6569. Seizure and impoundment of animals; notice and hearing; disposition of animal;  
 14494 disposition of proceeds upon sale.

14495 A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and  
 14496 impound any animal that has been abandoned, has been cruelly treated, or is suffering from an  
 14497 apparent violation of this chapter that has rendered the animal in such a condition as to constitute a  
 14498 direct and immediate threat to its life, safety or health. Before seizing or impounding any agricultural  
 14499 animal, such humane investigator, law-enforcement officer or animal control officer shall contact the  
 14500 State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the  
 14501 most appropriate action for the disposition of the agricultural animal. The seizure or impoundment of an  
 14502 equine resulting from a violation of subsection A (iii) or subsection B (ii) of § 3.2-6570 may be  
 14503 undertaken only by the State Veterinarian or State Veterinarian's representative who has received  
 14504 training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part  
 14505 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer  
 14506 or animal control officer shall notify the owner of the agricultural animal and the local attorney for the  
 14507 Commonwealth of the recommendation. The humane investigator, law-enforcement officer or animal  
 14508 control officer may impound the agricultural animal on the land where the agricultural animal is  
 14509 located if:

- 14510 1. The owner or tenant of the land where the agricultural animal is located gives written permission;
- 14511 2. A general district court so orders; or

14512 3. The owner or tenant of the land where the agricultural animal is located cannot be immediately  
 14513 located, and it is in the best interest of the agricultural animal to be impounded on the land where it is  
 14514 located until the written permission of the owner or tenant of the land can be obtained.

14515 If there is a direct and immediate threat to an agricultural animal, the humane investigator,  
 14516 law-enforcement officer or animal control officer may seize the animal, in which case the humane  
 14517 investigator, law-enforcement officer or animal control officer shall file within five business days on a  
 14518 form approved by the State Veterinarian a report on the condition of the animal at the time of the  
 14519 seizure, the disposition of the animal, and any other information required by the State Veterinarian.

14520 Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal  
 14521 control officer shall petition the general district court in the city or county where the animal is seized  
 14522 for a hearing. The hearing shall be not more than 10 business days from the date of the seizure of the  
 14523 animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly  
 14524 treated, or has not been provided adequate care.

14525 B. The humane investigator, law-enforcement officer, or animal control officer shall cause to be  
 14526 served upon the person with a right of property in the animal or the custodian of the animal notice of  
 14527 the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the  
 14528 animal is seized, written notice shall be given at least five days prior to the hearing of the time and  
 14529 place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where  
 14530 such animal is seized, written notice by any method or service of process as is provided by the Code of  
 14531 Virginia shall be given. If such person or the custodian is not known, the humane investigator,  
 14532 law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general  
 14533 circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior  
 14534 to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the  
 14535 hearing at the place provided for public notices at the city hall or courthouse wherein such hearing  
 14536 shall be held.

14537 C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial  
 14538 by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The  
 14539 Commonwealth shall be required to prove its case beyond a reasonable doubt.

14540 D. The humane investigator, law-enforcement officer, or animal control officer shall provide for such  
 14541 animal until the court has concluded the hearing. Any locality may require the owner of any animal  
 14542 held pursuant to this subsection for more than thirty days to post a bond in surety with the locality for  
 14543 the amount of the cost of boarding the animal for a period of time set by ordinance, not to exceed nine  
 14544 months.

14545 If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of  
 14546 adequate care, the animal shall be returned to the owner. If the court determines that the animal has  
 14547 been abandoned, cruelly treated, or deprived of adequate care, then the court shall order that the  
 14548 animal be: (i) sold by a local governing body; (ii) humanely destroyed, or disposed of by sale or gift to  
 14549 a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a  
 14550 licensed federal dealer having its principal place of business located within the Commonwealth; (iii)  
 14551 delivered to any local humane society or shelter, or to any person who is a resident of the county or  
 14552 city where the animal is seized or an adjacent county or city in the Commonwealth and who will pay  
 14553 the required license fee, if any, on such animal; or (iv) delivered to the person with a right of property  
 14554 in the animal as provided in subsection E.

14555 E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the  
 14556 court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care. The  
 14557 court shall direct that the animal be delivered to the person with a right of property in the animal, upon  
 14558 his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is  
 14559 not attributable to the actions or inactions of such person.

14560 F. The court shall order the owner of any animal determined to have been abandoned, cruelly  
 14561 treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing  
 14562 for such animal from the time the animal is seized until such time that the animal is disposed of in  
 14563 accordance with the provisions of this section, to the provider of such care.

14564 G. The court may prohibit the possession or ownership of other companion animals by the owner of  
 14565 any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In  
 14566 making a determination to prohibit the possession or ownership of companion animals, the court may  
 14567 take into consideration the owner's past record of convictions under this chapter or other laws  
 14568 prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental  
 14569 and physical condition.

14570 H. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court  
 14571 may prohibit the possession or ownership of any other agricultural animal by the owner of the  
 14572 agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural

14573 animals as evidenced by previous convictions of violating § 3.2-6504 or 3.2-6570. In making a  
 14574 determination to prohibit the possession or ownership of agricultural animals, the court may take into  
 14575 consideration the owner's mental and physical condition.

14576 I. Any person who is prohibited from owning or possessing animals pursuant to subsection G or H  
 14577 may petition the court to repeal the prohibition after two years have elapsed from the date of entry of  
 14578 the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the  
 14579 satisfaction of the court that the cause for the prohibition has ceased to exist.

14580 J. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the  
 14581 unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any,  
 14582 shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds  
 14583 remaining shall be paid into the Literary Fund.

14584 K. Nothing in this section shall be construed to prohibit the humane destruction of a critically  
 14585 injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement  
 14586 officer, animal control officer, or licensed veterinarian.

#### 14587 Article 9.

#### 14588 Cruelty to Animals.

14589 § 3.2-6570. Cruelty to animals; penalty.

14590 A. Any person who: (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully  
 14591 inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or  
 14592 cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or  
 14593 another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment;  
 14594 (iii) sores any equine for any purpose or administers drugs or medications to alter or mask such soring  
 14595 for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or  
 14596 medications is within the context of a veterinary client-patient relationship and solely for therapeutic  
 14597 purposes; (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to  
 14598 any animal; (v) carries or causes to be carried by any vehicle, vessel or otherwise any animal in a  
 14599 cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vi) causes any  
 14600 of the above things, or being the owner of such animal permits such acts to be done by another is guilty  
 14601 of a Class 1 misdemeanor.

14602 In addition to the penalties provided in this subsection, the court may, in its discretion, require any  
 14603 person convicted of a violation of this subsection to attend an anger management or other appropriate  
 14604 treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of  
 14605 such a program or counseling upon the person convicted.

14606 B. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona  
 14607 fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills  
 14608 any animal whether belonging to himself or another; (ii) sores any equine for any purpose or  
 14609 administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibit  
 14610 of any kind, unless such administration of drugs or medications is under the supervision of a licensed  
 14611 veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal of  
 14612 necessary food, drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any  
 14613 way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or (v) causes any of  
 14614 the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to  
 14615 be done by another; and has been within five years convicted of a violation of this subsection or  
 14616 subsection A, is guilty of a Class 6 felony if the current violation or any previous violation of this  
 14617 subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on  
 14618 the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary  
 14619 due to the condition of the animal, and such condition was a direct result of a violation of this  
 14620 subsection or subsection A.

14621 C. Nothing in this section shall be construed to prohibit the dehorning of cattle conducted in a  
 14622 reasonable and customary manner.

14623 D. This section shall not prohibit authorized wildlife management activities or hunting, fishing or  
 14624 trapping as regulated under other titles of the Code of Virginia, including Title 29.1, or to farming  
 14625 activities as provided under this title or regulations adopted hereunder.

14626 E. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide,  
 14627 fur or pelt of the dog or cat. A violation of this subsection is a Class 1 misdemeanor. A second or  
 14628 subsequent violation of this subsection is a Class 6 felony.

14629 F. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona  
 14630 fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any  
 14631 dog or cat that is a companion animal whether belonging to him or another; and (ii) as a direct result  
 14632 causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on  
 14633 the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary  
 14634 due to the condition of the animal, is guilty of a Class 6 felony. If a dog or cat is attacked on its

14635 owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use  
 14636 all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat.  
 14637 Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat  
 14638 and shall therefore be presumed not to have violated this subsection. The provisions of this subsection  
 14639 shall not overrule § 3.2-6540 or 3.2-6552.

14640 G. Any person convicted of violating this section may be prohibited by the court from possession or  
 14641 ownership of companion animals.

14642 § 3.2-6571. Dogfighting; penalty.

14643 A. No person shall knowingly do any of the following:

14644 1. Promote, engage in, or be employed in the fighting of dogs for amusement, sport or gain;

14645 2. Wager money or anything of value on the result of such fighting;

14646 3. Receive money or anything of value for the admission of another person to a place for  
 14647 dogfighting;

14648 4. Possess, own, train, transport, or sell any dog with the intent that such dog engage in an  
 14649 exhibition of fighting with another dog; or

14650 5. Permit any act described in subdivisions 1 through 4 of this subsection on any premises under his  
 14651 charge or control, or aid or abet any such act.

14652 B. Any animal control officer, as defined in § 3.2-6500, shall confiscate any dogs that have been,  
 14653 are, or are intended to be used in dogfighting and any equipment used in training such dogs or used in  
 14654 dogfighting.

14655 C. Any person convicted of violating this section may be prohibited by the court from possession or  
 14656 ownership of other companion animals.

14657 D. Any person who violates any provision of this section is guilty of a Class 6 felony.

14658 E. In addition to any other fines and costs, any person who is convicted of a violation of this section  
 14659 shall pay all reasonable costs incurred in housing or euthanizing any confiscated dogs.

14660 § 3.2-6572. Fighting cocks or other animals; attendance at fighting; penalty.

14661 A. Any person engaging in the fighting of cocks or other animals, except dogs, for money, prize or  
 14662 anything of value, or betting or wagering money or anything of value on the result of such fight, is  
 14663 guilty of a Class 3 misdemeanor.

14664 B. Attendance at the fighting of cocks or other animals, except dogs, where an admission fee is  
 14665 charged, directly or indirectly, is a Class 3 misdemeanor.

14666 C. Attendance at an exhibition of the fighting of dogs is a Class 1 misdemeanor.

14667 § 3.2-6573. Shooting birds for amusement, and renting premises for such purposes; penalty.

14668 Live pigeons or other birds or fowl shall not be kept or used for the purpose of a target, or to be  
 14669 shot at either for amusement or as a test of skill in marksmanship. It is a Class 4 misdemeanor to shoot  
 14670 at a bird kept or used as aforesaid, or to be a party to such shooting. Any person who lets any  
 14671 building, room, field or premises, or knowingly permits the use thereof for the purpose of such shooting  
 14672 is guilty of a Class 4 misdemeanor.

14673 Nothing contained herein shall apply to the shooting of wild game.

14674 Article 10.

14675 Mandatory Sterilization of Dogs and Cats Adopted from Releasing Agencies.

14676 § 3.2-6574. Sterilization of adopted dogs and cats; enforcement; civil penalty.

14677 A. Every new owner of a dog or cat adopted from a releasing agency shall cause to be sterilized the  
 14678 dog or cat pursuant to the agreement required by subdivision 2 of subsection B of this article.

14679 B. A dog or cat shall not be released for adoption from a releasing agency unless:

14680 1. The animal has already been sterilized; or

14681 2. The individual adopting the animal signs an agreement to have the animal sterilized by a licensed  
 14682 veterinarian: (i) within thirty days of the adoption, if the animal is sexually mature; or (ii) within 30  
 14683 days after the animal reaches six months of age, if the animal is not sexually mature at the time of  
 14684 adoption.

14685 C. A releasing agency may extend for 30 days the date by which a dog or cat must be sterilized on  
 14686 presentation of a written report from a veterinarian stating that the life or health of the adopted animal  
 14687 may be jeopardized by sterilization. In cases involving extenuating circumstances, the veterinarian and  
 14688 the releasing agency may negotiate the terms of an extension of the date by which the animal must be  
 14689 sterilized.

14690 D. Nothing in this section shall preclude the sterilization of a sexually immature dog or cat upon the  
 14691 written agreement of the veterinarian, the releasing agency, and the new owner.

14692 E. Upon the petition of an animal control officer, humane investigator, the State Veterinarian or a  
 14693 State Veterinarian's representative to the district court of the county or city where a violation of this  
 14694 article occurs, the court may order the new owner to take any steps necessary to comply with the  
 14695 requirements of this article. This remedy shall be exclusive of and in addition to any civil penalty that

14696 *may be imposed under this article.*

14697 *F. Any person who violates subsection A or B of this section shall be subject to a civil penalty not to*  
 14698 *exceed \$50.*

14699 *§ 3.2-6575. Sterilization agreement.*

14700 *Any agreement used by a releasing agency pursuant to subsection B of § 3.2-6574 shall contain:*

14701 *1. The date of the agreement;*

14702 *2. The names, addresses, and signatures of the releasing agency and the new owner;*

14703 *3. A description of the dog or cat to be adopted;*

14704 *4. The date by which the dog or cat is required to be sterilized; and*

14705 *5. A statement printed in conspicuous, bold print, that sterilization of the dog or cat is required*  
 14706 *under this article; that a person who violates this article is subject to a civil penalty; and that the new*  
 14707 *owner may be compelled to comply with the provisions of this article.*

14708 *§ 3.2-6576. Sterilization confirmation; civil penalty.*

14709 *Each new owner who signs a sterilization agreement shall, within seven days of the sterilization,*  
 14710 *cause to be delivered or mailed to the releasing agency written confirmation signed by the veterinarian*  
 14711 *who performed the sterilization. The confirmation shall briefly describe the dog or cat; include the new*  
 14712 *owner's name and address; certify that the sterilization was performed; and specify the date of the*  
 14713 *procedure. Any person who violates this section shall be subject to a civil penalty not to exceed \$150.*

14714 *§ 3.2-6577. Notification concerning lost, stolen or dead dogs or cats; civil penalty.*

14715 *If an adopted dog or cat is lost or stolen or dies before the animal is sterilized and before the date*  
 14716 *by which the dog or cat is required to be sterilized, the new owner shall, within seven days of the*  
 14717 *animal's disappearance or death, notify the releasing agency of the animal's disappearance or death.*  
 14718 *Any person who violates this section shall be subject to a civil penalty not to exceed \$25.*

14719 *§ 3.2-6578. Exemptions.*

14720 *This article shall not apply to:*

14721 *1. An owner reclaiming his dog or cat from a releasing agency;*

14722 *2. A releasing agency within a locality that has adopted a more stringent mandatory sterilization*  
 14723 *ordinance; and*

14724 *3. A local governing body that has disposed of an animal by sale or gift to a federal agency,*  
 14725 *state-supported institution, agency of the Commonwealth, agency of another state, or licensed federal*  
 14726 *dealer having its principal place of business located within the Commonwealth.*

14727 *§ 3.2-6579. Releasing agency; fees and deposits.*

14728 *A local governing body or releasing agency may charge and collect from the new owner a fee or*  
 14729 *deposit before releasing a dog or cat for adoption to ensure sterilization.*

14730 *§ 3.2-6580. Civil penalties.*

14731 *Any animal control officer, humane investigator, releasing agency, the State Veterinarian or State*  
 14732 *Veterinarian's representative shall be entitled to bring a civil action for any violation of this article that*  
 14733 *is subject to a civil penalty. Any civil penalty assessed pursuant to this article shall be paid into the*  
 14734 *treasury of the city or county where such civil action is brought and used for the purpose of defraying*  
 14735 *the costs of local animal control, including efforts to promote sterilization of cats and dogs.*

14736 *Article 11.*

14737 *Hybrid Canines.*

14738 *§ 3.2-6581. Definitions.*

14739 *As used in this article:*

14740 *"Adequate confinement" means that, while on the property of its owner and not under the direct*  
 14741 *supervision and control of the owner or custodian, a hybrid canine shall be confined in a humane*  
 14742 *manner in a securely enclosed and locked structure of sufficient height and design to: (i) prevent the*  
 14743 *animal's escape; or if the hybrid canine is determined to be a dangerous dog pursuant to § 3.2-6540,*  
 14744 *the structure shall prevent direct contact with any person or animal not authorized by the owner to be*  
 14745 *in direct contact with the hybrid canine; and (ii) provide a minimum of 100 square feet of floor space*  
 14746 *for each adult animal. Tethering of a hybrid canine not under the direct supervision and control of the*  
 14747 *owner or custodian shall not be considered adequate confinement.*

14748 *"Hybrid canine" means any animal that at any time has been or is permitted, registered, licensed,*  
 14749 *advertised or otherwise described or represented as a hybrid canine, wolf or coyote by its owner to a*  
 14750 *licensed veterinarian, law-enforcement officer, animal control officer, humane investigator, official of the*  
 14751 *Department of Health, or State Veterinarian's representative.*

14752 *"Responsible ownership" means the ownership and humane care of a hybrid canine in such a*  
 14753 *manner as to comply with all laws and ordinances regarding hybrid canines and prevent endangerment*  
 14754 *by the animal to public health and safety.*

14755 *§ 3.2-6582. Hybrid canine ordinance; penalty.*

14756 *A. Any locality may, by ordinance, establish a permit system to ensure the adequate confinement and*  
 14757 *responsible ownership of hybrid canines. Such ordinance may include requirements pertaining to: (i) the*



14758 term and expiration date of the permit; (ii) the number of hybrid canines that may be owned by a  
 14759 permittee; (iii) identification tags or tattooing of the animal; (iv) where the animal may be kept; (v)  
 14760 handling of the animal while not on the property of the owner; and (vi) information required to be  
 14761 provided when applying for a permit, such as the sex, color, height, vaccination records, length, or  
 14762 identifying marks of the hybrid canine. The ordinance shall not require that hybrid canines be disposed  
 14763 of by the owner unless the owner fails to obtain or renew any required permit or violates a provision of  
 14764 the ordinance or any other law pertaining to the responsible ownership of the hybrid canine. The  
 14765 locality may impose a permit fee to cover the cost of the permitting system.

14766 B. Violation of an ordinance enacted pursuant to this section is a Class 3 misdemeanor for the first  
 14767 violation and a Class 1 misdemeanor for any subsequent violation. The ordinance may require a  
 14768 violator to surrender the hybrid canine for euthanasia in accordance with § 3.2-6562.

14769 C. The provisions of this section shall not affect any ordinance adopted prior July 1, 1997.

14770 § 3.2-6583. Hybrid canines killing, injuring or chasing livestock.

14771 It shall be the duty of any animal control officer or other officer who may find a hybrid canine in  
 14772 the act of killing or injuring livestock or poultry to kill such hybrid canine forthwith, whether such  
 14773 hybrid canine bears a tag or not. Any person finding a hybrid canine committing any of the  
 14774 depredations mentioned in this section may kill such hybrid canine on sight as may any owner of  
 14775 livestock or his agent finding a hybrid canine chasing livestock on land lawfully utilized by the livestock  
 14776 when the circumstances show that such chasing is harmful to the livestock. Any court may order the  
 14777 animal control officer or other officer to kill any hybrid canine known to be a confirmed livestock or  
 14778 poultry killer, and any hybrid canine that kills poultry for a third time shall be considered a confirmed  
 14779 poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harbinger of  
 14780 the hybrid canine to produce the hybrid canine.

14781 Any animal control officer who has reason to believe that any hybrid canine is killing livestock or  
 14782 poultry shall be empowered to seize such hybrid canine solely for the purpose of examining such hybrid  
 14783 canine in order to determine whether it committed any of the depredations mentioned herein. Any  
 14784 animal control officer or other person who has reason to believe that any hybrid canine is killing  
 14785 livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate  
 14786 for the locality where such hybrid canine may be, who shall issue a warrant requiring the owner or  
 14787 custodian, if known, to appear before a general district court, at which time evidence shall be heard. If  
 14788 it appears that the hybrid canine is a livestock killer, or has committed any of the depredations  
 14789 mentioned in this section, the district court shall order that the hybrid canine be: (i) killed immediately  
 14790 by the animal control officer or other officer designated by the court; or (ii) removed to another state  
 14791 that does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any  
 14792 hybrid canine ordered removed from the Commonwealth that is later found in the Commonwealth shall  
 14793 be ordered by a court to be killed immediately.

14794 § 3.2-6584. Compensation for livestock and poultry killed by hybrid canines.

14795 Any person who has any livestock or poultry killed or injured by any hybrid canine not his own shall  
 14796 be entitled to receive as compensation the fair market value of such livestock or poultry not to exceed  
 14797 \$400 per animal or \$10 per fowl if: (i) the claimant has furnished evidence within 60 days of discovery  
 14798 of the quantity and value of the dead or injured livestock and the reasons the claimant believes that  
 14799 death or injury was caused by a hybrid canine; (ii) the animal control officer or other officer shall have  
 14800 been notified of the incident within 72 hours of its discovery; and (iii) the claimant first has exhausted  
 14801 his legal remedies against the owner, if known, of the hybrid canine doing the damage for which  
 14802 compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the  
 14803 hybrid canine upon which an execution has been returned unsatisfied.

14804 Local jurisdictions may by ordinance waive the requirements of (ii) or (iii) or both provided that the  
 14805 ordinance adopted requires that the animal control officer has conducted an investigation and that his  
 14806 investigation supports the claim. Upon payment under this section the local governing body shall be  
 14807 subrogated to the extent of compensation paid to the right of action to the owner of the livestock or  
 14808 poultry against the owner of the hybrid canine and may enforce the same in an appropriate action at  
 14809 law.

#### 14810 Article 12.

#### 14811 Miscellaneous Provisions.

14812 § 3.2-6585. Dogs and cats deemed personal property; rights relating thereto.

14813 All dogs and cats shall be deemed personal property and may be the subject of larceny and  
 14814 malicious or unlawful trespass. Owners, as defined in § 3.2-6500, may maintain any action for the  
 14815 killing of any such animals, or injury thereto, or unlawful detention or use thereof as in the case of  
 14816 other personal property. The owner of any dog or cat that is injured or killed contrary to the provisions  
 14817 of this chapter by any person shall be entitled to recover the value thereof or the damage done thereto  
 14818 in an appropriate action at law from such person.

14819 An animal control officer or other officer finding a stolen dog or cat, or a dog or cat held or  
 14820 detained contrary to law, shall have authority to seize and hold such animal pending action before a  
 14821 general district court or other court. If no such action is instituted within seven days, the animal control  
 14822 officer or other officer shall deliver the dog or cat to its owner.

14823 The presence of a dog or cat on the premises of a person other than its legal owner shall raise no  
 14824 presumption of theft against the owner, and the animal control officer may take such animal and notify  
 14825 its legal owner. The legal owner of the animal shall pay a reasonable charge as the local governing  
 14826 body by ordinance shall establish for the keep of such animal while in the possession of the animal  
 14827 control officer.

14828 § 3.2-6586. Dog injuring or killing other companion animals.

14829 The owner of any companion animal that is injured or killed by a dog shall be entitled to recover  
 14830 damages consistent with the provisions of § 3.2-6585 from the owner of such dog in an appropriate  
 14831 action at law if: (i) the injury occurred on the premises of the companion animal's owner; and (ii) the  
 14832 owner of the offending dog did not have the permission of the companion animal's owner for the dog to  
 14833 be on the premises at the time of the attack.

14834 § 3.2-6587. Unlawful acts; penalties.

14835 A. The following shall be unlawful acts and are Class 4 misdemeanors:

14836 1. For any person to make a false statement in order to secure a dog or cat license to which he is  
 14837 not entitled.

14838 2. For any dog or cat owner to fail to pay any license tax required by this chapter before February  
 14839 1 for the year in which it is due. In addition, the court may order confiscation and the proper  
 14840 disposition of the dog or cat.

14841 3. For any dog owner to allow a dog to run at large in violation of an ordinance passed pursuant to  
 14842 § 3.2-6539.

14843 4. For any person to fail to obey an ordinance passed pursuant to §§ 3.2-6522 and 3.2-6525.

14844 5. For any owner to fail to dispose of the body of his companion animals in accordance with  
 14845 § 3.2-6554.

14846 6. For the owner of any dog or cat with a contagious or infectious disease to permit such dog or cat  
 14847 to stray from his premises if such disease is known to the owner.

14848 7. For any person to conceal or harbor any dog or cat on which any required license tax has not  
 14849 been paid.

14850 8. For any person, except the owner or custodian, to remove a legally acquired license tag from a  
 14851 dog or cat without the permission of the owner or custodian.

14852 9. Any other violation of this chapter for which a specific penalty is not provided.

14853 B. It is a Class 1 misdemeanor for any person to:

14854 1. Present a false claim or to receive any money on a false claim under the provisions of § 3.2-6553;  
 14855 or

14856 2. Impersonate a humane investigator.

14857 § 3.2-6588. Intentional interference with a guide or leader dog; penalty.

14858 A. It is unlawful for a person to, without just cause, willfully impede or interfere with the duties  
 14859 performed by a dog if the person knows or has reason to believe the dog is a guide or leader dog. A  
 14860 violation of this subsection is a Class 3 misdemeanor.

14861 B. It is unlawful for a person to, without just cause, willfully injure a dog if the person knows or has  
 14862 reason to believe the dog is a guide or leader dog. A violation of this subsection is a Class 1  
 14863 misdemeanor.

14864 "Guide or leader dog" means a dog that: (i) serves as a dog guide for a blind person as defined in  
 14865 § 51.5-60 or for a person with a visual disability; (ii) serves as a listener for a deaf or hard-of-hearing  
 14866 person as defined in § 51.5-111; or (iii) provides support or assistance for a physically disabled or  
 14867 handicapped person.

14868 § 3.2-6589. Selling garments containing dog or cat fur prohibited; penalty.

14869 It is unlawful for any person to sell a garment containing the hide, fur, or pelt that he knows to be  
 14870 that of a domestic dog or cat. A violation of this section is punishable by a fine of not more than  
 14871 \$10,000.

14872 § 3.2-6590. Jurisdiction of general district courts; right of appeal.

14873 Unless otherwise provided, the provisions of this article may be enforced by any general district  
 14874 court in cities or counties wherein the offense is committed or the offender or owner may be found.  
 14875 Every such offender shall have the right of appeal to the appropriate circuit court.

14876 Article 4.

14877 Chippokes Plantation Farm Foundation.

14878 § 10.1-217.1. Foundation created.

14879 There is hereby created the Chippokes Plantation Farm Foundation, hereinafter referred to as the  
 14880 Foundation, a body politic and corporate to be organized and to have such powers as hereinafter

14881 provided.

14882 § 10.1-217.2. Administration of Foundation; appointment and terms of board of trustees.

14883 A. The Foundation shall be governed and administered by a board of trustees, consisting of 16  
 14884 members as follows: two members of the House of Delegates, one of whom shall be a member of the  
 14885 House Committee on Agriculture, Chesapeake and Natural Resources and one of whom shall represent  
 14886 Surry County, appointed by the Speaker of the House of Delegates; two members of the Senate, one of  
 14887 whom shall be a member of the Senate Committee on Agriculture, Conservation and Natural Resources  
 14888 and one of whom shall represent Surry County, appointed by the Senate Committee on Rules; the  
 14889 Commissioner of Agriculture and Consumer Services and the Director of the Department of  
 14890 Conservation and Recreation who shall serve ex officio without voting privileges; and 10 nonlegislative  
 14891 citizen members appointed by the Governor, subject to confirmation by the General Assembly, as  
 14892 follows: one member shall be appointed after conferring with the board of supervisors of Surry County,  
 14893 which member may be either a member of the board of supervisors or from the county at large; one  
 14894 member shall be appointed after conferring with the dean of the College of Agriculture and Life  
 14895 Sciences at Virginia Polytechnic Institute and State University; and eight members shall be appointed  
 14896 from the Commonwealth at-large. Legislative members, the Commissioner of Agriculture and Consumer  
 14897 Services, and the Director of the Department of Conservation and Recreation shall serve terms  
 14898 coincident with their terms of office. Members appointed by the Governor shall serve terms of four  
 14899 years. Vacancies occurring before the expiration of term shall be filled for the unexpired term. All  
 14900 members appointed may be reappointed.

14901 B. Trustees of the Foundation shall be reimbursed for all reasonable and necessary expenses  
 14902 incurred by them in the performance of their duties on behalf of the Foundation. Such reimbursement  
 14903 shall be paid from the Chippokes Plantation Farm Foundation Fund.

14904 C. The Foundation shall elect from its membership a chairman, vice-chairman, and such other  
 14905 officers as it deems appropriate.

14906 D. The chairman of the Board, the treasurer, and any other person designated by the Board to  
 14907 handle the funds of the Foundation, shall give bond, with corporate surety, in such penalty as is fixed  
 14908 by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall  
 14909 be paid from funds available to the Foundation.

14910 § 10.1-217.3. Purpose of Foundation; establishment of Chippokes Plantation Model Farm and the  
 14911 Agriculture and Forestry Center.

14912 The purpose of this Foundation shall be to plan, manage and provide financial and material  
 14913 resources and technical assistance for the development, maintenance and operation of the Chippokes  
 14914 Plantation Model Farm and the Agriculture and Forestry Center, which shall be established at  
 14915 Chippokes Plantation State Park, or a portion thereof, subject to the approval of the Director of the  
 14916 Department of Conservation and Recreation. The model farm shall be a working farm of diversified  
 14917 operation, utilizing modern practices which shall display and interpret for the public the daily activities  
 14918 of farming and contribute to the public's knowledge of agricultural production. The model farm may be  
 14919 operated under a lease or contract between the Director of the Department of Conservation and  
 14920 Recreation and the Foundation.

14921 The Foundation will provide interpretation of day-to-day activities of farm life and the transition of  
 14922 agricultural and forestry equipment and practices during the past three centuries through the  
 14923 Agriculture and Forestry Center, sawmill, antique farm and forest equipment displays and best  
 14924 management practices for agriculture. The consent and approval of the General Assembly shall not be  
 14925 required therefor.

14926 § 10.1-217.4. Powers of Foundation.

14927 In order to carry out its purpose, the Foundation shall have the following powers:

14928 1. To establish, administer, manage, including the creation of reserves, and make expenditures from  
 14929 the Chippokes Plantation Farm Foundation Fund hereinafter referred to as the fund, for the sole  
 14930 purpose of constructing the physical facilities and acquiring the necessary equipment, and whenever  
 14931 necessary, to maintain the continued operation and well-being of the model farm and physical facilities;

14932 2. To request the General Assembly to authorize the creation of debt secured by a pledge of net  
 14933 revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of  
 14934 Virginia, provided that such debt is created for specific revenue producing capital projects, including  
 14935 the enlargement or improvement thereof;

14936 3. To accept, hold, administer and receive gifts and bequests of money, securities or other property  
 14937 of whatsoever character, absolutely or in trust, to the fund, for the purposes for which the Foundation is  
 14938 created;

14939 4. To enter into contracts and agreements to accomplish the purposes of the Foundation;

14940 5. To sublease, with the approval of the Director of the Department of Conservation and Recreation,  
 14941 all or any part of the Chippokes Plantation Park leased to it by the Director;

- 14942 6. To establish a nonprofit corporation as an instrumentality to assist in the details of administering  
14943 the affairs of the Foundation; and
- 14944 7. Generally to do any and all lawful acts necessary or appropriate to carry out the purposes for  
14945 which the Foundation is created.
- 14946 § 10.1-217.5. Executive secretary.
- 14947 The Director of the Department of Conservation and Recreation may appoint an executive secretary  
14948 to the Foundation to perform such administrative duties as the Director and the Foundation may direct.
- 14949 § 10.1-217.6. Gifts and bequests to Foundation.
- 14950 Gifts and bequests of money, security and other property to the fund shall be deemed to be gifts of  
14951 the Commonwealth, and the fund shall be exempt from all state and local taxes except income earned by  
14952 the farm operator or operators in the operation of the model farm. Any income earned from gifts,  
14953 bequests, rent, security and other property shall be deposited to the credit of the fund. In the event that  
14954 the model farm cannot be established, operated, or maintained, the Director of the Department of  
14955 Conservation and Recreation may dispose of the property remaining at the farm and in the fund in any  
14956 manner which he deems fit.
- 14957 § 15.2-902. Authority of locality to control certain noxious weeds.
- 14958 A. Any locality may by ordinance prevent, control and abate the growth, importation, spread and  
14959 contamination of uninfested lands by the species of grass *Sorghum halepense*, commonly known as  
14960 Johnson grass or by the woody shrub *rosa multiflora*, commonly known as multiflora rose.
- 14961 ~~B.~~ The Virginia Department of Agriculture and Consumer Services is authorized to provide financial  
14962 and technical assistance to, and enter into agreements with, any locality which adopts an ordinance for  
14963 the control of Johnson grass or multiflora rose.
- 14964 B. Any locality may by ordinance control the growth of musk thistle, the weed designated as *Carduus*  
14965 *nutans* L., a biennial weed of the *Compositae* family, or curled thistle, the weed designated as *Carduus*  
14966 *acanthoides* L., an annual and biennial weed of the *Compositae* family. Any such musk thistle or curled  
14967 thistle growing in the locality may be declared a public nuisance and noxious weed, harmful to plant  
14968 and grass growth and to pastures, and may be destroyed.
- 14969 2. That whenever any of the conditions, requirements, provisions, or contents of any section or  
14970 chapter of Title 3.1 or any other title of the Code of Virginia as such titles existed prior to  
14971 October 1, 2008, are transferred in the same or modified form to a new section or chapter of Title  
14972 3.2 or any other title of the Code and whenever any such former section or chapter is given a new  
14973 number in Title 3.2 or any other title, all references to any such former section or chapter of Title  
14974 3.1 or other title appearing in this Code shall be construed to apply to the new or renumbered  
14975 section or chapter containing such conditions, requirements, provisions, contents, or portions  
14976 thereof.
- 14977 3. That the regulations of any department or agency affected by the revision of Title 3.1 or such  
14978 other titles in effect on the effective date of this act shall continue in effect to the extent that they  
14979 are not in conflict with this act and shall be deemed to be regulations adopted under this act.
- 14980 4. That this title revision of Title 3.1 as Title 3.2 shall not be construed to require the  
14981 reappointment of any officer or any member of a board, council, committee, or other appointed  
14982 body referred to in Title 3.2 and each such officer and member shall continue to serve for the  
14983 term for which appointed pursuant to the provisions of Title 3.1.
- 14984 5. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 3.2 so  
14985 as to give effect to other laws enacted by the 2008 Session of the General Assembly,  
14986 notwithstanding the delay in the effective date of this act.
- 14987 6. That the repeal of Title 3.1, effective as of October 1, 2008, shall not affect any act or offense  
14988 done or committed, or any penalty incurred, or any right established, accrued, or accruing on or  
14989 before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as  
14990 otherwise provided in this act, neither the repeal of Title 3.1 nor the enactment of Title 3.2 shall  
14991 apply to offenses committed prior to October 1, 2008, and prosecution for such offenses shall be  
14992 governed by the prior law, which is continued in effect for that purpose. For the purpose of this  
14993 enactment, an offense was committed prior to October 1, 2008, if any of the essential elements of  
14994 the offense occurred prior thereto.
- 14995 7. That any notice given, recognizance taken, or process or writ issued before October 1, 2008,  
14996 shall be valid although given, taken, or to be returned to a day after such date, in like manner as  
14997 if Title 3.2 had been effective before the same was given, taken, or issued.
- 14998 8. That if any clause, sentence, paragraph, subdivision, or section of Title 3.2 shall be adjudged in  
14999 any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or  
15000 invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,  
15001 paragraph, subdivision, or section thereof directly involved in the controversy in which the  
15002 judgment shall have been rendered, and to this end the provisions of Title 3.2 are declared  
15003 severable.

- 15004 9. That Title 3.1 (§§ 3.1-1 through 3.1-1114.1) [ is and Article 3.1 (§§ 10.1-559.1 through  
15005 10.1-559.11) of Chapter 5 of Title 10.1 are ] repealed.  
15006 10. That the provisions of this act shall become effective on October 1, 2008.

**ENGROSSED**

HB1331E