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HOUSE BILL NO. 6037

Offered June 23, 2008

A BILL to amend and reenact §§ 2.2-204, 3.1-14, 15.2-963, 57-48 through 57-54, 57-55.2, 57-55.3, 57-56, 57-57, 57-59 through 57-61.2, 57-63, 57-65, 57-66, 57-67, 57-69, 59.1-203, 59.1-207.3, 59.1-207.44, 59.1-296 through 59.1-296.2:1, 59.1-297.2, 59.1-298, 59.1-306 through 59.1-308.2, 59.1-313, 59.1-317, 59.1-318, 59.1-320.1, 59.1-321 through 59.1-324, 59.1-326, 59.1-328, 59.1-329, 59.1-333, 59.1-334, 59.1-335.2, 59.1-335.3, 59.1-335.4, 59.1-429, 59.1-433, 59.1-435, 59.1-436, 59.1-437, 59.1-439, 59.1-440, 59.1-441.2, 59.1-441.4, 59.1-441.5, 59.1-445 through 59.1-447.1, 59.1-448.1, 59.1-451, 59.1-452, 59.1-473, 59.1-516 of the Code of Virginia, to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 9.2, consisting of sections numbered 2.2-907, 2.2-908, and 2.2-909, and to repeal Chapter 3.1 (§§ 3.1-18.1 through 3.1-18.3) of Title 3.1 of the Code of Virginia, relating to the Department of Consumer Affairs.

Patron—Marshall, R.G.

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-204, 3.1-14, 15.2-963, 57-48 through 57-54, 57-55.2, 57-55.3, 57-56, 57-57, 57-59 through 57-61.2, 57-63, 57-65, 57-66, 57-67, 57-69, 59.1-203, 59.1-207.3, 59.1-207.44, 59.1-296 through 59.1-296.2:1, 59.1-297.2, 59.1-298, 59.1-306 through 59.1-308.2, 59.1-313, 59.1-317, 59.1-318, 59.1-320.1, 59.1-321 through 59.1-324, 59.1-326, 59.1-328, 59.1-329, 59.1-333, 59.1-334, 59.1-335.2, 59.1-335.3, 59.1-335.4, 59.1-429, 59.1-433, 59.1-435, 59.1-436, 59.1-437, 59.1-439, 59.1-440, 59.1-441.2, 59.1-441.4, 59.1-441.5, 59.1-445 through 59.1-447.1, 59.1-448.1, 59.1-451, 59.1-452, 59.1-473, 59.1-516 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 9.2, consisting of sections 2.2-907, 2.2-908, and 2.2-909 as follows:

§ 2.2-204. Position established; agencies for which responsible; additional duties.

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Business Assistance, *Department of Consumer Affairs,* Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, Department of Minority Business Enterprise, Virginia Housing Development Authority, Virginia Resources Authority, Virginia Racing Commission, Tobacco Indemnification and Community Revitalization Commission, and Board of Accountancy. 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.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

CHAPTER 9.2.

DEPARTMENT OF CONSUMER AFFAIRS.

§ 2.2-907. Creation of Department; appointment of Director; powers and duties.

A. There is created a Department of Consumer Affairs (the Department), which formerly existed as a division within the Department of Agriculture and Consumer Services. The Department shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

§ 2.2-908. Powers and duties.

A. The Director shall, under the direction and control of the Governor, administer and supervise the Department and shall:

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

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

3. Maintain records of consumer complaints and their eventual disposition, which records shall be

open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws.

4. Establish mechanisms by which to receive complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include, but are not limited to, establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through appropriate computer networks.

5. Establish and administer programs that facilitate resolution of complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program.

6. Enter into agreements or accept commissions from federal agencies.

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

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

C. The responsibility of the Director shall embrace the consumer programs and responsibilities of all the departments and agencies of the Commonwealth.

§ 2.2-909. Enforcement of laws by Director or investigators; authority of investigators appointed by Director.

The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department and any of the programs for which the Department has enforcement responsibility. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of the statutes and regulations pursuant to authority given by this chapter.

§ 3.1-14. Powers and duties in general; rules and regulations of Board of Agriculture and Consumer Services; records to be held in confidence.

A. 1. The Commissioner shall see to the proper execution of the laws relating to the subject of his Department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this Commonwealth concerning the sale of commercial fertilizers, seed and food products, with authority in the Board of Agriculture and Consumer Services to make rules and regulations governing the same, and to publish them as required by law. He shall ensure that, unless an intent is expressly stated otherwise, the term "horse" or "equine," when used in this title, shall be considered to mean an agricultural or livestock animal.

2. He shall be charged with the inducement of capital and immigration, by the dissemination of information relative to the advantages of soil, climate, healthfulness and markets of this Commonwealth, and to resources and industrial opportunities offered in the Commonwealth as he may deem useful, and also with investigation adapted to promote the improvement of milk and beef cattle and other stock.

3. He, or his duly authorized representative, shall have the authority, as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials.

4. ~~He, or his duly authorized representative, shall establish mechanisms by which to receive complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include, but are not limited to, establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through~~

~~computer networks such as the Internet, the World Wide Web, America Online, and Virginia Online.~~

~~5. He, or his duly authorized representative, shall establish and administer programs that facilitate resolution of complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 which volunteer to participate in a program.~~

~~He shall submit an annual written report on or before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation, and Natural Resources on his activities pursuant to this subdivision and subdivision 4 of this subsection during the preceding calendar year.~~

~~6.~~ He shall have such other powers and duties as are prescribed by law.

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

1. Schedules of work for regulatory inspection;

2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;

3. Reports of criminal violations made to the Department by persons outside the Department;

4. Records of active investigations until the investigations are closed;

5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records which are otherwise a matter of public record;

6. Tax returns required by the agricultural commodity commissions established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.

§ 15.2-963. Local offices of consumer affairs; establishment; powers and duties.

Any county or city may, by ordinance, establish a local office of consumer affairs which shall have only such powers as may be necessary to perform the following duties:

1. To serve as a central coordinating agency and clearinghouse for receiving and investigating complaints of illegal, fraudulent, deceptive or dangerous practices occurring in such county or city, and referring such complaints to the local departments or agencies charged with enforcement of consumer laws. The processing of complaints involving statutes or regulations administered by state agencies shall be coordinated, where applicable, with the Department of ~~Agriculture and~~ Consumer ~~Services~~ *Affairs*;

2. To attempt to resolve complaints received pursuant to subdivision 1 hereof by means of voluntary mediation or arbitration which may involve the creation of written agreements to resolve individual complaints between complainants and respondents to complaints;

3. To develop programs of community consumer education and information; and

4. To maintain records of consumer complaints and their eventual disposition, provided that records disclosing that business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosures of such matters may be necessary for the enforcement of laws. A copy of all periodic reports compiled by any local office of consumer affairs shall be filed with the Department of ~~Agriculture and~~ Consumer ~~Services~~*Affairs*.

§ 57-48. Definitions.

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

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

"Charitable organization" means any person which is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits or obtains contributions solicited from the public. This definition shall not be deemed to include (i) any church or convention or association of churches, primarily operated for nonsecular purposes and no part of the net income of which inures to the direct benefit of any individual; (ii) any political party as defined in § 24.2-101 or any political campaign committee or political action committee or other political committee required by state or federal law to file a report or statement of contributions and expenditures; or (iii) any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt charitable organization or on behalf of an organization excluded from the definition of charitable organization.

"Charitable purpose" means any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation.

"Charitable sales promotion" means advertised sales that feature the names of both the commercial co-venturer and the charitable or civic organization and which state that the purchase or use of the goods, services, entertainment, or any other thing of value that the commercial co-venturer normally sells, will benefit the charitable or civic organization or its purposes. To qualify as a charitable sales

promotion, the consumer must pay the same price for the thing of value as the commercial co-venturer usually charges without the charitable sales promotion and the consumer retains the thing of value.

"Civic organization" means any local service club, veterans' post, fraternal society or association, volunteer fire or rescue groups, or local civic league or association of 10 or more persons not organized for profit but operated exclusively for educational or charitable purposes as defined herein, including the promotion of community welfare, and the net earnings of which are devoted exclusively to charitable, educational, recreational or social welfare purposes.

"Commercial co-venturer" means any person who (i) is organized for profit, (ii) is regularly and primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic organizations or charitable purposes, and (iii) conducts an advertised charitable sales promotion for a specified limited period of time.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.~~

"Contribution" means any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority. The term "contribution" shall not include any donation of blood or any gift made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Director" means the Director of the Department of Consumer Affairs.

"Federated fund-raising organization" means any federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

"File with the ~~Commissioner~~*Director*" means depositing the originals of the documents required to be filed, along with the payment of the appropriate fee and all supporting documents with the Office of Consumer Affairs, or submitting the required documents and any appropriate attachments and fees by utilizing an online filing system approved by the ~~Commissioner~~*Director*.

"Fund-raising expenses" means the expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

"Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

"Parent organization" means that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates.

"Person" means any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

"Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable or civic organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional fund-raising counsel.

"Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable or civic organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees specially employed by, or for a charitable or civic organization, who are engaged in the solicitation of contributions under the direction of such person, or any person who, for a financial or other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable or civic organization in connection with the solicitation of contributions but does not qualify as a professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt charitable organization or a bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional solicitor.

"Sale," "sell" and "sold" mean the transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

"Solicit" and "solicitation" mean the request or appeal, directly or indirectly, for any contribution on

the plea or representation that such contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting such contribution:

1. Any oral or written request;

2. Any announcement to the press, over the radio or television, or by telephone or telegraph concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

3. The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

4. The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

"Solicitation" as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution.

"Terrorists and terrorist organizations" means any person, organization, group or conspiracy who assists or has assisted terrorist organizations, as provided in 18 U.S.C. § 2339 B or who commits or attempts to commit acts of terrorism, as defined in § 18.2-46.4.

§ 57-49. Registration of charitable organizations; prohibition against support of terrorists.

A. Every charitable organization, except as otherwise provided in this chapter, which intends to solicit contributions within the Commonwealth, or have funds solicited on its behalf, shall, prior to any solicitation, file an initial registration statement with the ~~Commissioner~~ *Director* upon forms acceptable to him. Each registration statement shall thereafter be refiled on or before the fifteenth day of the fifth calendar month of the next and each following fiscal year in which such charitable organization is engaged in solicitation activities within the Commonwealth. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the statements required under this chapter. A charitable organization's registration statement may alternatively be filed online on a website approved by the ~~Commissioner~~*Director*. Such statement shall contain the following information:

1. The name of the organization and the purpose for which it was organized.

2. The principal address of the organization, the address of any offices in the Commonwealth and its designated agent for process within the Commonwealth. If no such agent is designated, the organization shall be deemed to have designated the Secretary of the Commonwealth. If the organization does not maintain an office, the name and address of the person having custody of its financial records.

3. The names and addresses of any chapters, branches or affiliates in the Commonwealth.

4. The place where and the date when the organization was legally established, the form of its organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.

5. The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer.

6. A copy of a balance sheet and income and expense statement, with the opinion of any independent public accountant, for the organization's immediately preceding fiscal year; a copy of a financial statement certified by an independent public accountant covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, fund-raising expenses and allocation of disbursement of funds raised; or a copy of Internal Revenue Service Form 990. The report required by this subdivision shall comply with the accounting standards prescribed pursuant to § 57-53. Any organization with gross revenue of less than $25,000 may submit a balance sheet and income and expense statement verified under oath or affirmation by the treasurer of the organization.

7. A statement showing the computation of the percentages provided for in § 57-58.

8. A statement indicating whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others.

9. A statement indicating whether the organization is authorized by any other governmental authority to solicit contributions and whether it, or any officer, professional fund-raiser or professional solicitor thereof, is or has ever been enjoined by any court or otherwise prohibited from soliciting contributions in any jurisdiction.

10. The general purpose or purposes for which the contributions to be solicited shall be used.

11. The name or names under which it intends to solicit contributions.

12. The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions.

13. The names of the individuals or officers of the organization responsible for the final distribution

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of the contributions.

14. A statement indicating whether the organization, or any officer, professional fund-raiser or professional solicitor thereof, has ever been convicted of a felony and, if so, a description of the pertinent facts.

15. A copy of the current articles of incorporation, bylaws, or other governing documents. If current copies are already on file with the ~~Commissioner~~*Director*, only amendments, if any, shall be filed in years after the initial registration.

16. A description of the types of solicitation to be undertaken.

A1. Every registration statement shall include the following language:

"No funds have been or will knowingly be used, directly or indirectly, to benefit or provide support, in cash or in kind, to terrorists, terrorist organizations, terrorist activities, or the family members of any terrorist."

A2. No person shall be registered by the Commonwealth or by any locality to solicit funds that are intended to benefit or support terrorists, terrorist organizations or terrorist activities. No person shall be registered by the Commonwealth or by any locality to solicit funds that are intended to benefit or support a family member of any terrorist, unless a court of competent jurisdiction within the Commonwealth, upon petition of an interested person, finds by clear and convincing evidence that, for a period of at least three years next preceding any act of terrorism committed by such terrorist or terrorist organization, the family members to whom the benefit of the contributions shall inure have been living separate and apart from the terrorist or terrorist organization, and the family members have not provided any financial support, in cash or in kind, to the terrorist or terrorist organization for the same period of time.

B. Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, shall separately report the information required by this section or report the information to its parent organization which shall then furnish such information as to itself and all of its state affiliates, chapters and branches in a consolidated form. All affiliated organizations included in a consolidated registration statement shall be considered as one charitable organization for all purposes of this chapter. If a consolidated registration statement is filed, all statements thereafter filed shall be upon the same basis unless permission to change is granted by the ~~Commissioner~~*Director*.

C. Each federated fund-raising organization shall report the information required by this section in a consolidated form. Any federated fund-raising organization may elect to exclude from its consolidated report information relating to the separate fund-raising activities of all of its independent member agencies. No member agency of a federated fund-raising organization shall be required to report separately any information contained in such a consolidated report. Any separate solicitations campaign conducted by, or on behalf of, any such member agency shall nevertheless be subject to all other provisions of this chapter.

D. The registration forms shall be signed by the chief fiscal officer and by another authorized officer of the charitable organization. If the registration forms are filed online using a website approved by the ~~Commissioner~~*Director*, the charitable organization shall follow the procedures on that website for signing the forms.

E. Every charitable organization which submits an independent registration to the ~~Commissioner~~ *Director* shall pay an annual registration fee of (i) $30 if its gross contributions for the preceding year do not exceed $25,000; (ii) $50 if its gross contributions exceed $25,000 but do not exceed $50,000; (iii) $100 if its gross contributions exceed $50,000 but do not exceed $100,000; (iv) $200 if its gross contributions exceed $100,000 but do not exceed $500,000; (v) $250 if its gross contributions exceed $500,000 but do not exceed $1 million; and (vi) $325 if its gross contributions exceed $1 million. A parent organization filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement. Organizations with no prior financial history filing an initial registration shall be required to pay an initial fee of $100. Organizations with prior financial history filing an initial registration shall be required to pay an initial fee of $100 in addition to the annual registration fee. Any organization which allows its registration to lapse, without requesting an extension of time to file, shall be required to resubmit an initial registration. An extension may be granted upon receipt of a written request.

§ 57-50. Reciprocal agreements with other states; online filing.

A. The ~~Commissioner~~ *Director* may enter into a reciprocal agreement with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements, the ~~Commissioner~~ *Director* may accept information filed by a charitable organization, professional fund-raising counsel and professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this chapter, if such information is substantially similar to the information required under this chapter. The ~~Commissioner~~

Director may also grant exemption from the requirement for the filing of [an] annual registration statement with him to charitable organizations organized under the laws of another state, having their principal place of business in such other state, having funds derived principally from sources outside the Commonwealth, and having been granted exemption from the filing of registration statements by such other state, if such state has a statute similar in substance to the provisions of this chapter and participates in a reciprocal agreement pursuant to this section.

B. The ~~Commissioner~~ *Director* may also enter into a memorandum of understanding or other similar agreement with the appropriate authority of any other state or federal agency for the purpose of providing charitable organizations, professional fund-raising counsel or professional solicitors with the option of filing their annual registration statements online on a website approved by all states that are parties to the memorandum of understanding. The ~~Commissioner~~ *Director* may accept such online filing in lieu of the information required to be filed in accordance with the provisions of this chapter if the procedures for online filing provide for submitting substantially similar information to that required by this chapter. The information provided by charitable organizations, professional fund-raising counsel or professional solicitors at the approved website as a result of their completion of the online registration statement shall be shared with the appropriate authority of any state or federal agency that is a party to the memorandum of understanding.

§ 57-51. Nonresident registration.

(a) Any unregistered charitable organization, professional fund-raising counsel or professional solicitor, having his or its principal place of business without this Commonwealth or organized under and by virtue of the laws of a foreign state who or which shall solicit contributions from people in this Commonwealth, shall be deemed to have irrevocably appointed the Secretary of the Commonwealth as his or its agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, or any partner, principal, officer, or director thereof or to such professional fund-raising counsel or professional solicitor. Service shall be made by leaving two copies of the process, notice, order or demand, together with any fee required by law, in the office of the Secretary of the Commonwealth, together with an affidavit giving the last known post-office address of the defendant and such service shall be sufficient if notice of such service and a copy of the process, notice, order or demand are forthwith sent by registered mail, with return receipt requested, by the Secretary of the Commonwealth or one of his staff to the defendant at the specified address. An affidavit by the Secretary of the Commonwealth showing compliance herewith shall be filed with the papers in the suit, action or proceeding.

(b) Any charitable organization, having no office or place of business within this Commonwealth and soliciting in this Commonwealth from without the Commonwealth solely by telephone or telegraph, direct mail or advertising in national media, and any professional fund-raising counsel or professional solicitor engaged by such an organization, shall file with the ~~Commissioner~~ *Director* any report which would otherwise be required of it or request the ~~Commissioner~~ *Director* to determine that such organization is exempt under § 57-50 or § 57-60.

§ 57-52. Publication of warnings concerning certain charitable and civic organizations.

If the ~~Commissioner~~ *Director* determines that any charitable or civic organization not registered with his office and not exempt from registration, irrespective of whether such organization is subject to the jurisdiction of this Commonwealth, has solicited or may be soliciting in this Commonwealth, directly or indirectly, by any means including without limitation, by telephone or telegraph, by direct mail or by advertising in national media, he may, after ten days' written notice mailed to the charitable or civic organization, cause to be printed in one or more newspapers published in this Commonwealth a notice in substantially the following form: WARNING-UNREGISTERED CHARITABLE SOLICITATION

The organization named below has solicited contributions from Virginia citizens for allegedly charitable purposes. It has not registered with or been granted the appropriate exempt status by the ~~Commissioner~~ *Director* as required by law. Contributors are cautioned that their contributions to such organization may be used for noncharitable purposes.

§ 57-52.1. Publication of warnings concerning solicitation by professional solicitors.

If the ~~Commissioner~~ *Director* determines that any charitable or civic organization has contracted with a professional solicitor to solicit on its behalf and that the professional solicitor may be soliciting or has solicited in this Commonwealth, directly or indirectly, by any means including, without limitation, by telephone or telegraph, by direct mail or by advertising in national media, and the professional solicitor has not registered with the ~~Commissioner~~ *Director* as required by § 57-61, the ~~Commissioner~~ *Director* may, after five days' written notice mailed to the charitable or civic organization, cause to be printed in one or more newspapers published in this Commonwealth a notice on substantially the following form: WARNING-UNREGISTERED CHARITABLE SOLICITATION BY PROFESSIONAL SOLICITOR

The charitable or civic organization named below has contracted with a professional solicitor to solicit on its behalf. The professional solicitor has not registered with the Commonwealth of Virginia as

required by law. Contributors are cautioned that their contributions may be used for noncharitable purposes.

§ 57-53. Records to be kept by charitable organizations.

Every charitable organization shall keep true fiscal records for all fiscal years beginning on and after January 1, 1975, in accordance with the standards and practices set out in Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations adopted and approved in December, 1964, by the National Health Council and National Social Welfare Assembly, and as may be modified from time to time by the National Health Council and the National Assembly for Policy and Development, or in accordance with the standards and practices set out in Uniform Chart of Accounts and Definitions for Hospitals as approved by, and as may be modified by, the American Hospital Association, or in accordance with such other uniform standards of accounting as the ~~Commissioner~~ *Director* may find to be as appropriate. A copy of such standards shall be maintained on file in the office of the ~~Commissioner~~*Director*. Such records shall be retained for a period of at least three years after the end of the period of registration to which they relate.

§ 57-54. Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors.

A. Every contract or agreement between professional fund-raising counsel and a charitable or civic organization must be in writing and shall be filed with the ~~Commissioner~~ *Director* within ten days after such contract or written agreement is entered into.

B. Every contract, or a written statement of the nature of the arrangement to prevail in the absence of a contract, between a professional solicitor and a charitable or civic organization shall be filed with the ~~Commissioner~~ *Director* at least ten days prior to commencement of the contract.

C. All agreements and arrangements between professional fund-raising counsel and charitable or civic organizations must be reduced to writing before executed or acted upon.

§ 57-55.2. Charitable solicitation disclosure.

Every professional solicitor who solicits contributions from a prospective contributor in this Commonwealth: (i) shall identify himself and his employer; (ii) shall disclose that he is a paid solicitor; and (iii) shall further disclose, in writing, the fact that a financial statement for the last fiscal year is available from the ~~State Office~~ *Department* of Consumer Affairs.

§ 57-55.3. Disclosure regarding financial statement required.

Every charitable organization, required to be registered pursuant to § 57-49, and every professional solicitor, required to be registered pursuant to § 57-61, soliciting contributions from prospective contributors, shall disclose to the potential donor contemporaneously at the point of a written request or on a written receipt for donations made in response to an oral request that a financial statement is available from the ~~State Office~~*Department* of Consumer Affairs ~~in the Department of Agriculture and Consumer Services~~ upon request.

§ 57-56. Information filed to become public records.

Registration statements, reports, professional fund-raising counsel contracts or professional solicitor contracts and all other documents and information required to be filed under this chapter shall become public records in the office of the ~~Commissioner~~*Director*, and shall be open to the general public for inspection at such time and under such conditions as the ~~Commissioner~~ *Director* may prescribe. A charge not exceeding one dollar per page may be made for any copy of such documents and information as may be furnished any person by the ~~Commissioner~~*Director*.

§ 57-57. Prohibited acts.

A. No charitable organization shall use or exploit the fact of registration under this chapter so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by this Commonwealth. The use of the following statement shall not be deemed a prohibited exploitation, "Registered with the ~~Commissioner~~ *Director* as required by law. Registration does not imply endorsement of a public solicitation for contributions."

B. No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services represent, or lead anyone by any manner, means, practice or device whatsoever to believe, that the person on whose behalf such solicitation or sale is being conducted is a bona fide charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if he has reason to believe such not to be the fact.

C. No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services for charitable purposes, represent or lead anyone by any manner, means, practice or device whatsoever to believe, that any other person sponsors or endorses such solicitation of contributions, sale of tangible personal property or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such other person has not given written consent to the use of his name for these purposes.

Any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be

deemed thereby to have given his consent to the use of his name in said campaign. Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

D. No person shall denominate any membership fee or purchase price of goods or services sold, as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such goods or services will be entitled to an income tax deduction for his cost or any portion thereof unless:

1. A signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible has been obtained; or

2. The member or purchaser is informed in writing that such cost may not be deductible.

No person shall represent or imply that a contributor will be entitled to an income tax deduction for his contribution unless a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be deductible has been obtained.

E. No person shall make any representation that he is soliciting contributions for or on behalf of a charitable or civic organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable or civic organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable or civic organization.

F. No professional solicitor shall solicit in the name of or on behalf of any charitable or civic organization unless such solicitor has:

1. Written authorization of two officers of such organization, a copy of which shall be filed with the ~~Commissioner~~*Director*. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

2. Such authorization with him when making solicitations and exhibits it on request to persons solicited, police officers, or agents of the ~~Commissioner~~*Director*.

G. No charitable or civic organization shall accept any contribution exceeding $5 in cash or tangible property without providing, on request of the donor, a written receipt acknowledging such contribution on behalf of the organization.

H. No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within this Commonwealth if:

1. Such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the ~~Commissioner~~ *Director* before any solicitation occurs; or

2. Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the ~~Commissioner~~ *Director* first determines in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within this Commonwealth or that the reason for such injunction or prohibition does not involve moral turpitude.

I. No person shall solicit within this Commonwealth for the benefit of any other person located without the Commonwealth, if such other person refuses to supply any information which the ~~Commissioner~~ *Director* deems necessary to assure himself that the provisions of this chapter are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than 10 percent of the gross amount collected.

J. No charitable or civic organization shall allow a professional solicitor to solicit on its behalf if the professional solicitor has not registered pursuant to § 57-61.

K. No charitable or civic organization, professional fund-raising counsel or professional solicitor shall solicit in this Commonwealth without being duly registered or granted the appropriate exempt status under this chapter.

L. No person shall employ in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement.

M. No officer, agent, director or trustee of any charitable or civic organization, professional fund-raising counsel or professional solicitor shall refuse or fail, after notice, to produce to the ~~Commissioner~~ *Director* any books and records of such organization.

N. No person shall use or permit the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable or civic organization on whose behalf the solicitation was made.

O. No person shall knowingly and willfully make any false statements in any registration application

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or statement, report or other disclosure required by this chapter.

P. No professional solicitor shall solicit on behalf of a charitable or civic organization unless the charitable or civic organization has registered or been granted the appropriate exempt status under this chapter.

Q. No person shall represent, in any solicitation, that tickets to events will be donated for use by another unless he complies with the following requirements:

1. He shall have obtained commitments, in writing, from persons or charitable or civic organizations stating that they will accept donated tickets and specifying the number of persons for whom they are willing to accept tickets;

2. He shall not collect or accept more contributions for donated tickets than the number of ticket commitments he has received from persons or charitable or civic organizations;

3. He shall have printed in advance on each ticket the exact number of persons to be admitted by the ticket and the dollar price or value of each ticket;

4. He shall distribute the tickets in a timely fashion to those having given commitments; and

5. He shall maintain during the solicitation and for a period of three years thereafter: (i) records reflecting the name and address of each contributor and the amount of money and number of tickets donated by each such contributor; and (ii) the written commitments of each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted, as required in subdivision 1 of subsection Q of this section.

R. No person shall knowingly use or permit the use of funds raised by a solicitation or by contribution to benefit or provide support, directly or indirectly, in cash or in kind, to terrorists, terrorist organizations, terrorist activities or to family members of any terrorist.

§ 57-59. Enforcement of chapter; seizure of property connected with terrorism; penalties.

A. Any person who willfully and knowingly violates or causes to be violated any provision of this chapter, or who willfully and knowingly gives false or incorrect information to the ~~Commissioner~~ *Director* in filing statements or reports required by this chapter, whether such report or statement is verified or not, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than $100 and not more than $1,000 or by confinement in jail for not more than six months, or both, and for the second and any subsequent offense by a fine of not less than $500 and not more than $2,500 or by confinement in jail for not more than one year, or both.

The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of this chapter: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in § 18.2-46.4. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

B. Whenever the ~~Commissioner~~ *Director* has reasonable cause to believe that a violation of this chapter may have occurred, the ~~Commissioner~~*Director*, upon his own motion or upon complaint of any person, may investigate any charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor to determine whether such charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor has violated the provisions of this chapter. In the conduct of such investigation, the ~~Commissioner~~ *Director* may:

1. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter to be investigated.

2. Administer oaths or affirmations and, upon his motion or upon request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Any proceedings or hearings by the ~~Commissioner~~*Director* under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

C. Whenever the Attorney General has reasonable cause to believe that any person has operated, is operating or is about to operate in violation of the provisions of this chapter, the Attorney General may issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this subsection.

D. Whenever the Attorney General, or any attorney for the Commonwealth or the attorney for any city, county or town has reason to believe that any charitable or civic organization, commercial

co-venturer, professional fund-raising counsel or professional solicitor has operated, is operating or is about to operate in violation of the provisions of this chapter, the Attorney General, attorney for the Commonwealth or the attorney for any city, county or town, in addition to all other actions authorized by law, may bring an action in the name of the Commonwealth against such charitable or civic organization, commercial co-venturer, professional fund-raising counsel or professional solicitor, or their officers, directors, or other agents to enjoin the continuation of such violation, solicitation or collection, or the engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate.

E. In any action brought under subsection D, the court may also award to the Commonwealth a civil penalty of not more than $5,000 per violation, to be paid to the Literary Fund, reasonable expenses incurred by the state or local agency in investigating and preparing the case, not to exceed $250 per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented.

§ 57-60. Exemptions.

A. The following persons shall be exempt from the registration requirements of § 57-49, but shall otherwise be subject to the provisions of this chapter:

1. Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of $5,000, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of $5,000, it shall, within 30 days after the date it has received total contributions in excess of $5,000, register with and report to the ~~Commissioner~~*Director* as required by this chapter.

4. Organizations that solicit only within the membership of the organization by the members thereof.

5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered with the ~~Commissioner~~*Director*.

6. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

7. Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization that exists solely to support any such health care institutions. For the purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.

8. Civic organizations as defined herein.

9. Nonprofit debt counseling agencies licensed pursuant to Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1.

10. Agencies designated by the Virginia Department for the Aging pursuant to subdivision A 6 of § 2.2-703 as area agencies on aging.

11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status under § 501 (c) (5) of the Internal Revenue Code.

12. Trade associations that have been granted tax-exempt status under § 501 (c) (6) of the Internal Revenue Code.

13. Organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that are organized wholly as regional emergency medical services councils in

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accordance with § 32.1-111.11.

14. Nonprofit organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and that solicit contributions only through (i) grant proposals submitted to for-profit corporations, (ii) grant proposals submitted to other nonprofit organizations that have been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code, or (iii) grant proposals submitted to organizations determined to be private foundations under § 509 (a) of the Internal Revenue Code.

B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10 percent of its gross receipts were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property, or tangible personal property or personal services to be used within such localities. An organization that is otherwise qualified for exemption under this subsection that solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

C. No charitable or civic organization shall be exempt under this section unless it submits to the ~~Commissioner~~*Director*, who in his discretion may extend such filing deadline prospectively or retrospectively for good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. Parent organizations may file consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be exempt from the registration provisions of this chapter. If the organization is exempted, the ~~Commissioner~~*Director* shall issue a letter of exemption, which may be exhibited to the public. A registration fee of $10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any of its local chapters.

§ 57-61. Registration of professional fund-raising counsels and solicitors.

A. No person shall act as a professional fund-raising counsel or professional solicitor for a charitable or civic organization, unless he has first registered with the ~~Commissioner~~*Director*. Applications for registration shall be in writing under oath or affirmation in the form prescribed by the ~~Commissioner~~ *Director* and contain such information as he may require. The application shall be accompanied by an annual fee of $100 for the professional fund-raising counsel. The fee for a professional solicitor shall be $500. Any professional solicitor who fails to register prior to any solicitation shall be required to pay a late filing fee of $250. A partnership or corporation which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees.

B. Each professional solicitor shall, at the time of making application, file with and have approved by the ~~Commissioner~~ *Director* a bond in which the applicant shall be the principal obligor in the sum of $20,000 with one or more sureties satisfactory to the *Director*~~Commissioner~~, whose liability in the aggregate as such sureties will at least equal $20,000, and maintain the bond in effect so long as the registration is in effect. The bond shall run to the Commonwealth of Virginia for the use of the bonds in reimbursement for any penalties or losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional solicitor may file a consolidated bond on behalf of all its members, officers, agents and employees.

C. Each registration shall be valid throughout the Commonwealth of Virginia for a period of one year from the date of issue and may be renewed for additional one-year periods upon written application, under oath or affirmation, in the form prescribed by the ~~Commissioner~~ *Director* and the payment of the fee prescribed herein.

D. At least ten days prior to the commencement of each solicitation campaign, the solicitor shall file with the ~~Commissioner~~ *Director* a copy of the contract entered into with any charitable or civic organization and shall file a completed "Solicitation Notice" on forms prescribed by the ~~Commissioner~~ *Director*. The Solicitation Notice shall be in writing and under oath, and shall include a description of the solicitation event or campaign, the projected starting and ending dates of the campaign, and the location and telephone number from which the solicitation will be conducted. The charitable or civic organization on whose behalf the solicitor is acting shall certify that the Solicitation Notice and accompanying material are true and complete.

E. Professional solicitors shall file a final accounting report with the ~~Commissioner~~ *Director* after the completion of the solicitation campaign, showing all funds collected and such other information as the

~~Commissioner~~ *Director* may require. The final accounting report shall be filed within ninety days of the campaign's completion. Professional solicitors may file a written request with the ~~Commissioner~~ *Director* for an extension, not to exceed ninety days, for filing the final accounting report. The extension period shall be calculated from the first day following the expiration of the initial ninety-day period for filing the report.

A late filing fee of twenty-five dollars shall be imposed for each thirty-day period, or any portion thereof, that an extension request or the final accounting report is not timely filed with the ~~Commissioner~~ *Director*. No late fees shall be imposed for the period between the date the extension request is filed with the ~~Commissioner~~ *Director* through 180 days following the completion of the solicitation campaign. An additional late filing fee of twenty-five dollars shall be imposed for each thirty-day period, or any portion thereof, that the final accounting report is not filed with the ~~Commissioner~~ *Director*, calculated from the end of any extension period. The late filing fees shall be in addition to all other penalties authorized by law.

F. The solicitor shall maintain during each solicitation campaign and for not less than three years after its completion, the following records: (i) the name and address of each contributor and the date and amount of the contribution, provided that the ~~Commissioner~~ *Director* shall not disclose this information except to the extent necessary for investigative or law-enforcement purposes; (ii) the name and residence address of each employee, agent, or other person involved in the solicitation; (iii) records of all expenses incurred in the course of the solicitation campaign; and (iv) the account number and location of all bank accounts where receipts from the campaign will be deposited.

G. All funds collected by the solicitor shall be deposited in a bank account. The bank account shall include the name of the charitable or civic organization with whom the solicitor has contracted. The professional solicitor shall promptly provide to the charitable or civic organization a copy of all monthly bank statements.

H. Any change in information filed with the ~~Commissioner~~ *Director* pursuant to this section shall be reported in writing to the ~~Commissioner~~ *Director* within seven days after the change occurs.

§ 57-61.1. Time and effect of registration.

A. Registrations by charitable organizations, professional solicitors, and professional fund-raising counsel are effective, if complete, upon receipt by the ~~Commissioner~~*Director*. Incomplete registration forms and registration forms lacking required accompanying documents are not effective until completed or until the required accompanying documents are received by the ~~Commissioner~~*Director*. No person shall be considered registered under this chapter for any purpose until his registration is complete.

B. If the ~~Commissioner~~*Director* at any time determines that (i) the requirements of § 57-49 or § 57-61 have not been met or (ii) the registrant is violating any requirement of §§ 57-54, 57-55.2 or § 57-57 or any regulations adopted pursuant to § 57-66, then the ~~Commissioner~~*Director* may suspend the registration until the registrant meets the requirements or complies and provides evidence thereof satisfactory to the ~~Commissioner~~*Director*. The suspension may be based upon an informal conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. If the ~~Commissioner~~*Director* finds that the public health, safety or welfare requires urgent action, and if he also finds reasonable cause to believe that the registrant has failed to comply with § 57-49 or § 57-61 or is violating §§ 57-54, 57-55.2 or § 57-57 or any regulations adopted pursuant to § 57-66, then the ~~Commissioner~~*Director* may provide advance notice of as little as twenty-four hours for the conduct of the informal conference under § 2.2-4019 of the Administrative Process Act.

§ 57-61.2. Commercial co-ventures.

A. No commercial co-venturer shall conduct any charitable sales promotion in the Commonwealth on behalf of a charitable or civic organization unless the charitable or civic organization is duly registered or granted the appropriate exempt status as provided by this chapter.

B. Prior to any charitable sales promotion in the Commonwealth, the commercial co-venturer shall have a written agreement with the charitable or civic organization on whose behalf the charitable sales promotion is to be conducted. Such agreement shall be signed by an authorized representative of the commercial co-venturer and two officers of the charitable or civic organization.

C. The commercial co-venturer shall maintain all records in connection with the charitable sales promotion for a period of three years after the end date of the charitable sales promotion. All such records shall be made available to the ~~Commissioner~~*Director* upon request.

§ 57-63. Local ordinances.

A. The governing body of any city, town or county may by ordinance not inconsistent with this chapter provide for the regulation and licensing of charitable or civic organizations soliciting within the city, town or county, and for penalties for violation thereof, subject to the following limitations:

1. No local license tax or fee in excess of ten dollars shall be required of any charitable organization.

2. No charitable organization exempt from registration under subdivision A. 1., A. 4., A. 6. or A. 7. of § 57-60 shall be required to be licensed. Any such organization may obtain a local license, without

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payment of any license tax or fee, upon compliance with all such requirements of the local ordinance as would have been applicable had it been registered with the ~~Commissioner~~*Director* during each year in which it obtained an exemption letter under subsection C of § 57-60.

3. No charitable organization that has registered with the ~~Commissioner~~*Director* for the current and next preceding three years, or exempt for such years under § 57-50, shall be required to provide any financial information.

4. No charitable or civic organization that solicits within the Commonwealth from a place outside the Commonwealth solely by telephone, telegraph, direct mail or advertising in national media, and having no chapter, branch, area or office within the Commonwealth, shall be required to be licensed.

5. No museum that has registered with the ~~Commissioner~~*Director* as required by § 57-49 and that has been granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code shall be required to comply with the regulation or licensing provisions of any local charitable solicitations ordinance.

6. If a charitable or civic organization shall designate by power of attorney filed with the ~~Commissioner~~*Director* one or more persons authorized to sign on its behalf, the signature, verification or affirmation of any such persons shall be sufficient for all purposes of any local charitable solicitations ordinance.

B. Any ordinance adopted pursuant to this section may provide, inter alia, for procedures whereby charitable organizations may, for valid reasons, after an administrative hearing, be denied a local license or whereby a license may be revoked. Valid reasons for denial or revocation of a local license may be defined to include, without limitation, the expenditure of charitable assets for noncharitable purposes, any misrepresentation to the public or to any prospective donor, and any violation of state or local law. Any charitable organization which is denied a license may, within fifteen days from the date of such denial, apply for relief to the circuit court of such city or county or of the county in which such town is located. If the court is satisfied that the denial was for any reason erroneous, it shall provide such relief as may be appropriate.

C. No ordinance, or amendment thereto, adopted pursuant to this section shall be valid for any calendar year beginning after December 31, 1978, unless, before September 1 of that year, there shall have been filed with the ~~Commissioner~~*Director*, on forms to be prescribed by him, information deemed by him to be sufficient for the purpose of advising charitable or civic organizations of the necessity for them to be licensed by such city, town or county.

D. No charitable organization shall be required to comply with the provisions of local ordinances if such organization has registered with the ~~Commissioner~~*Director* or if such organization is a chapter, branch or affiliate included in the consolidated report of an organization or federated organization registered with the ~~Commissioner~~*Director*, except that such charitable organization shall not be exempted from that portion of any local ordinance that requires such organization to register its name, the names of its solicitors and the dates and times that they will be soliciting in the locality.

§ 57-65. Fees and charges.

All fees and charges collected by the ~~Commissioner~~*Director* as provided in this chapter shall be paid into a special fund of the state treasury. Such funds shall be used to finance the administration and operation of this program.

§ 57-66. Rules and regulations; model ordinance.

The Board shall have the power to make and publish reasonable rules and regulations not inconsistent with this chapter, or other applicable laws, or the Constitution of the Commonwealth, or the Constitution of the United States, for the enforcement of the provisions of this chapter and for the achievement of uniform regulation of charitable solicitations throughout the Commonwealth. The ~~Commissioner~~*Director* shall promulgate a model ordinance which may be used by localities in their regulation of charitable solicitations.

§ 57-67. Application to court for relief.

Any person aggrieved by any final order of the ~~Commissioner~~*Director* is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Either party may appeal any final order of such court to the Court of Appeals in the same manner as provided by law in cases of appeals of right.

§ 57-69. Effective date.

Notwithstanding any other section of this chapter to the contrary, no charitable organization, professional fund-raising counsel, or professional solicitor shall be required to register with the ~~Commissioner~~*Director* hereunder until July 1, 1978.

§ 59.1-203. Restraining prohibited acts.

A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of § 59.1-200. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not

be necessary that damages be proved.

B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town determines that a person subject to the provisions of this chapter intends to depart from this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before said attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as provided in § 59.1-202.

C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of § 59.1-200.

D. The ~~Commissioner~~*Director* of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of § 59.1-200, and, if necessary, to request, but not to require, an appropriate legal official to bring an action to enjoin such violation.

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

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

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

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

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

1. The customer may receive a written estimate on request;

2. No repair work charge may exceed the written estimate by more than ten percent unless the additional work represented by the excess charge has been authorized by the customer;

3. Any conditions imposed by the automobile repair facility in providing written estimates, such as the limited hours when written estimates will be prepared or the amount of the reasonable fee charged for preparing a written estimate and for related diagnostic work;

4. The facility shall offer to return all replaced parts except warranty, core charge or trade-in parts required to be returned to a manufacturer or distributor; and

5. Any complaints can be made to the ~~Virginia Office~~ *Department* of Consumer Affairs.

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

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

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

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

§ 59.1-207.44. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title. It shall be the responsibility of any supplier who uses a comparison price to be able to substantiate the basis for

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any price comparisons made by the supplier. Upon the request of the Attorney General, any attorney for the Commonwealth, the attorney of any county, city, or town, or the ~~Commissioner~~*Director* of the ~~Virginia~~ Department of ~~Agriculture~~ ~~and~~ Consumer ~~Services~~ *Affairs*, a supplier shall provide documentation to substantiate the basis for any comparison price utilized by the supplier in any advertisement governed by this chapter. No provision of this chapter shall be construed to apply to any supplier whose advertising practices are governed by § 46.2-1581.

§ 59.1-296. Definitions.

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health spa contract.

"~~Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.~~

"Comparable alternate facility" means a health spa facility that provides health spa services and facilities that are reasonably of like kind, in nature and quality, to the services originally contracted for at the same location through another health spa or at another location of the health spa.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health spa contract.

"Director" means the Director of the Department of Consumer Affairs.

"Health spa" means and includes any person, firm, corporation, organization, club or association engaged in the sale of memberships in a program of physical exercise, which includes the use of one or more of a sauna, whirlpool, weight-lifting room, massage, steam room, or exercising machine or device, or engaged in the sale of the right or privilege to use exercise equipment or facilities, such as a sauna, whirlpool, weight-lifting room, massage, steam room or exercising machine or device. The term "health spa" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health spas are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school, college or university; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health spa contract" means an agreement whereby the buyer of health spa services purchases, or becomes obligated to purchase, health spa services.

"Health spa services" means and includes services, privileges, or rights offered for sale or provided by a health spa.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health spa membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health spa service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods which are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

"Prepayment" means payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health spa are fully open and available for regular use by the members.

"Relocation" means the provision of health spa services by the health spa that entered into the membership contract at a location other than that designated in the member's contract.

§ 59.1-296.1. Registration; fees.

A. It shall be unlawful for any health spa to offer, advertise, or execute or cause to be executed by the buyer any health spa contract in this Commonwealth unless the health spa at the time of the offer, advertisement, sale or execution of a health spa contract has been properly registered with the ~~Commissioner~~*Director*. The registration shall (i) disclose the address, ownership, date of first sales and date of first opening of the health spa and such other information as the ~~Commissioner~~*Director* may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each annual registration in the amount indicated

below:

Number of unexpired contracts originally written for more than one month	Registration fee
0 to 250	$200
251 to 500	$300
501 to 2000	$700
2001 or more	$800

Further, it shall be accompanied by a late fee of fifty dollars if the registration renewal is neither postmarked nor received on or before July 1. In the event that a spa has multiple locations, a fifty dollar late fee for the first location and twenty-five dollars for each additional location shall accompany the registrations. For each successive thirty days after August 1, an additional twenty-five dollars shall be added for each location. Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate registration, even though the separate locations are owned or operated by the same owner.

B. Any health spa which sells a health spa contract prior to registering pursuant to this section and, if required, submits the appropriate surety required by § 59.1-306 shall pay a late filing fee of $100 for each thirty-day period the registration or surety is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within twenty-one days if there is a change in the information included in the registration.

D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the ~~Virginia~~ Department of ~~Agriculture and~~ Consumer ~~Services~~ *Affairs* to be used in the administration of this chapter.

§ 59.1-296.2. Contracts sold on prepayment basis.

Each health spa selling contracts or health spa services on a prepayment basis shall notify the ~~Commissioner~~*Director* of the proposed location of the spa for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health spa has commenced operations and has remained open for a period of thirty days. The account shall be established and maintained only in a financial institution which agrees in writing with the ~~Commissioner~~*Director* to hold all funds deposited and not to release such funds until receipt of written authorization from the ~~Commissioner~~*Director*. The prepayment funds deposited will be eligible for withdrawal by the health spa after the health spa has been open and providing services pursuant to its health spa contracts for thirty days and the ~~Commissioner~~*Director* gives written authorization for withdrawal.

However, the provisions of this section shall not apply to any health spa duly registered pursuant to the provisions of § 59.1-296.1 which has posted a bond or letter of credit in the amount of $100,000.

§ 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund.

A. No health spa shall sell a health spa contract on a prepayment basis without disclosing in the contract the date on which the health spa shall open. The opening date shall not be later than 12 months from the signing of the contract.

B. No health spa shall close or relocate without first giving notice to the ~~Commissioner~~*Director* and conspicuously posting a notice both within and outside each entrance to the health spa facility being closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior to the closing or relocation date. If a relocation is to occur, the ~~Commissioner~~*Director* and the health spa facility's members shall be provided with the address of the specific new location at the time of this notice.

C. No health spa shall knowingly and willfully make any false statement in any registration application, statement, report or other disclosure required by this chapter.

D. No health spa shall refuse or fail, after notice from the ~~Commissioner~~*Director*, to produce for the ~~Commissioner~~*Director*'s review any of the health spa's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in ten-point bold-faced type or larger on the face of each health spa contract, no health spa shall sell any health spa contract if any owner of the spa, regardless of the extent of his ownership, previously owned in whole or in part a health spa that closed for business and failed to:

1. Refund all moneys due to holders of health spa contracts; or

2. Provide comparable alternate facilities at another health spa that agreed in writing to honor all provisions of the health spa contracts.

F. No health spa that has failed to provide the ~~Commissioner~~*Director* the appropriate surety pursuant to § 59.1-306 shall sell a health spa contract unless that contract contains a statement that reads as

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follows: "This spa is not permitted, pursuant to the Virginia Health Spa Act, to accept any initiation fee in excess of $125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in ten-point bold-faced type or larger on the face of each contract.

§ 59.1-297.2. Automatic termination of a health spa contract.

A health spa contract shall be considered terminated automatically if the health spa facility goes out of business; provided that both the health spa and the buyer shall continue to have all rights under the contract they had at the time of termination. For purposes of this section, a health spa facility "goes out of business" if the facility has permanently closed and the health spa does not provide a comparable alternate facility for the buyer to use. A health spa facility does not "go out of business" if (a) the facility closes and the health spa provides a comparable alternate facility for the buyer to use; (b) the facility is relocated to a comparable alternate facility; or (c) the facility closes temporarily for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a flood or other act of God, or other cause not within the reasonable control of the health spa. Within 14 days from the time a health spa facility temporarily closes pursuant to subdivision (c) of this section, the health spa shall provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the ~~Commissioner~~*Director* and shall conspicuously post such notice both within and outside each entrance to the facility.

§ 59.1-298. Notice to buyer.

A copy of the executed health spa contract shall be delivered to the buyer at the time the contract is executed. All health spa contracts shall (i) be in writing, (ii) be signed by the buyer, (iii) designate the date on which the buyer actually signed the contract, (iv) state the starting and expiration dates of the initial membership period, (v) separately identify any initiation fee, (vi) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health spa any complaint the buyer has with the health spa, and that the ~~Virginia~~ Department of ~~Agriculture and Consumer Services, Office of~~ Consumer Affairs regulates health spas in the Commonwealth pursuant to the provisions of the Virginia Health Spa Act, and (vii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

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      If you wish to cancel this contract, you may cancel by making or
 delivering written notice to this health spa. The notice must say that you do
 not wish to be bound by the contract and must be delivered or mailed before
 midnight of the third business day after you sign this contract. The notice
 must be delivered or mailed to: ..........................................
                        Health spa shall insert its name and mailing address.)
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If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this spa goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the location designated in this contract. You may also cancel if you become physically unable to use a substantial portion of the health spa services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health spa services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health spa may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health spa. If you cancel after the three business days, the health spa may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

§ 59.1-306. Bond or letter of credit required; exception.

A. Every health spa, before it enters into a health spa contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of $125, shall file and maintain with the ~~Commissioner~~*Director*, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of applicable contracts	Amount of bond or letter of credit
0 to 250	$10,000
251 to 500	$20,000
501 to 750	$30,000

751 to 1000	$40,000
1001 to 1250	$50,000
1251 to 1500	$60,000
1501 to 1750	$70,000
1751 to 2000	$80,000
2001 or more	$100,000

For purposes of calculating the number of applicable unexpired health spa contracts when determining the required amount of bond or letter of credit, health spa contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health spa contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health spa contracts that are payable only on a monthly basis and for which the initiation fee is no more than $250, or (ii) if the number of the health spa's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health spa contracts.

The number of applicable unexpired contracts shall be separately calculated for each location where health spa services are offered.

Each separate location where health spa services are offered shall be considered a separate health spa and shall file a separate bond or letter of credit with respect thereto, even though the separate locations are owned or operated by the same owner.

However, no owner shall be required to file with the ~~Commissioner~~*Director* bonds or letters of credit in excess of $300,000. If the $300,000 limit is applicable, then the bonds or letters of credit filed by such owner shall apply to all health spas owned or operated by the same owner.

B. A health spa which has not filed a bond or letter of credit may nevertheless sell health spa contracts of up to 36 months' duration so long as the amount of payment actually charged, due or received each month by the health spa or any holder of its health spa contracts does not exceed the monthly fee calculated pursuant to the definition thereof in § 59.1-296, with the exception that the payment actually charged may include a maximum initiation fee of $125 for health spa contracts of 13 months or more in duration.

§ 59.1-307. Bond or letter of credit; persons protected.

A. The bond or letter of credit required by § 59.1-306 shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health spa services in a facility which fails to open by the date provided by the contract, which date shall not be in excess of twelve months from the signing of the contract; (ii) any buyer injured by having paid money for health spa services in a facility which goes out of business prior to the expiration of the buyer's health spa contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the ~~Commissioner~~*Director*.

§ 59.1-308. Change in ownership of health spa.

For purposes of this chapter, a health spa shall be considered a new health spa and subject to the requirements of a bond or letter of credit at the time the health spa changes ownership. Any health spa which has more than fifty percent ownership by the same stockholder(s) and/or partner(s) shall be considered as owned by the same owner. A change in ownership shall not release, cancel or terminate liability under any bond or letter of credit previously filed unless the ~~Commissioner~~*Director* agrees in writing to such release, cancellation or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the ~~Commissioner~~*Director* at least ten days prior to the effective date of the change in ownership.

§ 59.1-308.1. Production of records.

Every health spa, upon the written request of the ~~Commissioner~~*Director*, shall make available to the ~~Commissioner~~*Director* its prepayment bank account records and all membership contracts for inspection and copying, to enable the ~~Commissioner~~*Director* reasonably to determine compliance with this chapter. Every health spa shall maintain a true copy of each health spa contract executed between the health spa and a buyer. Each contract shall be maintained for its term, including any renewal. Every health spa shall maintain the executed health spa contracts at a designated location where the contracts may be inspected by the ~~Commissioner~~*Director*. If the location designated by the health spa is outside Virginia, the health spa shall pay the reasonable travel costs of an inspection by the ~~Commissioner~~*Director*.

§ 59.1-308.2. Investigations.

A. The ~~Commissioner~~*Director* may:

1. Make necessary public or private investigations within or without this Commonwealth to

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determine any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter; and

2. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter under investigation.

B. For the purpose of any investigation or proceeding under this chapter, the ~~Commissioner~~*Director* may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the ~~Commissioner~~*Director* pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. If any person fails to obey a subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may adopt reasonable regulations to implement the provisions of this chapter and such regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

§ 59.1-313. Definitions.

When used in this chapter, unless the context requires a different meaning, the following shall have the meanings respectively set forth:

"Advertisement" shall be synonymous with "offer to sell."

"Agreement" shall be synonymous with "membership camping contract."

"Blanket encumbrance" means any legal instrument, whether or not evidencing the obligation to pay money, which permits or requires the foreclosure, sale, conveyance or other disposition of the campground or any portion thereof.

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

"Business day" means any day except Sunday or a legal holiday.

"Camping site" means any parcel of real estate designed and promoted for the purpose of locating thereon a trailer, tent, tent trailer, pickup camper, recreational vehicle, house trailer, van, cabin or other similar device used for camping or for overnight lodging.

"Campground" means any single tract or parcel of real property on which there are at least ten camping sites.

~~"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services, or a member of his staff to whom he has delegated his duties under this chapter.~~

"Contract" shall be synonymous with "membership camping contract."

"Department" means the Virginia Department of ~~Agriculture and Consumer Services~~ *Consumer Affairs.*

"Director" means the Director of the Department of Consumer Affairs.

"Facility" means an amenity within a campground set aside or otherwise made available to purchasers in their use and enjoyment of the campground, and may include campsites, swimming pools, tennis courts, recreational buildings, boat docks, restrooms, showers, laundry rooms, and trading posts or grocery stores.

"Holder" means the membership camping operator who enters into a membership camping contract with a purchaser or the assignee of such contract who purchases the same for value.

"Managing entity" means a person who undertakes the duties, responsibilities and obligations of the management of a campground.

"Membership camping contract" or "membership camping agreement" means any written agreement of more than one year's duration, executed in whole or in part within this Commonwealth, which grants to a purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof on a first come, first serve or reservation basis together with other purchasers. "Membership camping contract" or "membership camping agreement" also means any written agreement of more than one year's duration, executed in whole or in part within this Commonwealth, which obligates the membership camping operator to transfer or which does in fact transfer to the purchaser title to or an ownership interest in a campground or any portion thereof, and which gives the purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof, on a first come, first serve or reservation basis together with other purchasers.

"Membership camping operator" means any person who is in the business of soliciting, offering,

advertising, or executing membership camping contracts. A membership camping operator shall not include:

1. Any enterprise that is tax-exempt under § 501 (c) (3) of the Internal Revenue Code, as amended; or

2. Any enterprise that is tax-exempt under Chapter 36 of Title 58.1; or

3. Manufactured home parks wherein the residents occupy the premises as their primary homes.

"Membership fees, dues, and assessments" means payments required of the purchaser, or his successor in interest, by the agreement for the support and maintenance of facilities at the campground about which the agreement relates.

"Nondisturbance agreement" means any instrument executed by the owner of a blanket encumbrance which subordinates the rights of the owner of the blanket encumbrance to the rights of the purchasers of membership camping contracts. Unless the agreement specifically so provides, the owner of a blanket encumbrance does not by the fact of such ownership assume any of the obligations of the membership camping operator under membership camping contracts or under this chapter.

"Offer," "offer to sell," "offer to execute" or "offering" means any offer, solicitation, advertisement, or inducement, to execute a membership camping agreement.

"Person" means any individual, corporation, partnership, company, unincorporated association or any other legal entity other than a government or agency or a subdivision thereof.

"Purchase money" means any money, currency, note, security or other consideration paid by the purchaser for a membership camping agreement.

"Purchaser" means a person who enters into a membership camping contract with the membership camping operator.

"Ratio of membership camping contracts to camping sites" means the total number of membership camping contracts sold in relation to each available camping site.

"Reciprocal program" means any arrangement under which a purchaser is permitted to use camping sites or facilities at one or more campgrounds not owned or operated by the membership camping operator with whom the purchaser has entered into a membership camping contract.

"Salesperson" means an individual, other than a membership camping operator, who offers to sell a membership camping contract by means of a direct sales presentation, but does not include a person who merely refers a prospective purchaser to a sales person without making any direct sales presentation.

§ 59.1-317. Administration; unlawful offer or execution of membership camping contract.

A. This chapter shall be administered by the Virginia Department of ~~Agriculture and Consumer Services~~ *Consumer Affairs*.

B. It shall be unlawful for any membership camping operator to offer to sell any membership camping contract in this Commonwealth unless he is registered with the ~~Commissioner~~*Director*.

C. It shall be unlawful for any membership camping operator registered under this chapter to sell any membership camping contract which causes the total ratio of the outstanding and valid membership camping contracts to exceed a ratio of fifteen such contracts for each camping site.

§ 59.1-318. Application for registration of membership camping operator.

A. The application for registration shall be on a form prescribed by the ~~Commissioner~~*Director* and shall include, to the extent applicable, the following:

1. The applicant's name, address, and the organizational form of his business, including the date, and jurisdiction under which the business was organized; the address of each of its offices in this Commonwealth; and the name and address of each campground located in this Commonwealth, which is owned or operated, in whole or in part, by the applicant;

2. The name, address, and principal occupation for the past five years of every officer of the applicant, including its principal managers, and the extent and nature of the interest of each such person at the time the application is filed;

3. A list of all owners of ten percent or more of the capital stock of the applicant, except that this list is not required if the applicant is a company required to report under the Securities and Exchange Act of 1934;

4. A brief description of and a certified copy of the instrument which creates the applicant's ownership of, or other right to use the campground and the facilities at the campground which are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement or other agreement entitling the applicant to use such campground and facilities, and any material provision of the agreement which restricts a purchaser's use of such campground or facilities;

5. A sample copy of each instrument which will be delivered to a purchaser to evidence his membership in the campground and a sample copy of each agreement which a purchaser will be required to execute;

6. A statement of the zoning and other governmental regulations affecting the use of the campground

including the site plans and building permits and their status;

7. A list of special taxes or assessments, whether current or proposed, which affect the campground;

8. Financial statements of the applicant prepared in accordance with generally accepted accounting principles, which shall include a financial statement for the most recent fiscal year audited by an independent certified public accountant and an unaudited financial statement for the most recent fiscal quarter;

9. A copy of the disclosure statement required by § 59.1-326;

10. An irrevocable appointment of the ~~Commissioner~~*Director* or his designees to receive service of any lawful process in any proceeding arising under this chapter against the applicant or his agents, except one issued by the ~~Commissioner~~*Director*. The ~~Commissioner~~*Director* shall forward any such process by registered or certified mail addressed to any of the principals, officers, directors, partners, or trustees of the applicant who are listed on the application for registration pursuant to this chapter, or to any other person designated in the application to receive such process, and shall keep a record of it. Any process, notice, order, or demand issued by the ~~Commissioner~~*Director* shall be served by registered mail addressed to any principal, officer, director, partner, or trustee of the applicant listed on the application for registration pursuant to this chapter or to any person designated in the application to receive such process. Nothing in this section shall be construed to limit or prohibit the lawful service of process on individual principals as allowed by the laws of the Commonwealth. The names and addresses of the principals, officers, directors, partners, or trustees of the membership camping operator as last filed with the ~~Commissioner~~*Director* pursuant to the provisions of this chapter shall be conclusive for the purposes of services of process;

11. A narrative description of the promotional plan for the sale of the membership camping contracts;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A copy of the agreement, if any, between the applicant and any person owning, controlling, or managing the campground and the applicant;

14. A complete list of locations and addresses of any and all sales offices located within the Commonwealth, together with a roster of all salespersons who are employed in this Commonwealth by the applicant whether as employees or as independent contractors;

15. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed; and

16. Complete information concerning any adverse order, judgment, or decree which has been entered by any court or administrative agency in connection with a campground or other project operated by the applicant or in which the applicant has or had an interest at the time.

B. The application shall be signed by the membership camping operator, an officer or general partner thereof or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

C. The application shall be submitted with a facing page as might be prescribed by the ~~Commissioner~~*Director* if then in effect, along with the appropriate fees.

D. An application for registration shall be amended within twenty-five days if there is a material change in the information included in the application. A material change includes any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract, but does not include minor changes covering the use of the campground, its facilities or the reciprocal program.

E. The review of the application for registration of the membership camping operator shall occur pursuant to the provisions of § 59.1-320.1.

F. Registration with the ~~Commissioner~~*Director* shall not be deemed to be an approval or endorsement by the ~~Commissioner~~*Director* of the membership camping operator, his membership camping contract, or his campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement shall be unlawful.

§ 59.1-320.1. Review of registration application.

A. Once the ~~Commissioner~~*Director* receives an application for registration in proper form, accompanied by the proper fee, he shall, within a reasonable period of time not to exceed forty-five days after the receipt of such application:

1. Register the applicant if the applicant:

a. Has met the requirements of § 59.1-318;

b. Is not in violation of § 59.1-323; and

c. Has a reasonable ability to discharge the obligations imposed upon him by his membership camping contract; or

2. Issue a notice of opportunity for a hearing to consider whether the application should be denied, if

it reasonably appears that the applicant fails to satisfy any provision of § 59.1-323 or any other requirement of this chapter.

B. Except as otherwise provided by order of the ~~Commissioner~~*Director*, each registration shall be valid for the period from July 1 of one year until its expiration on June 30 of the following year.

§ 59.1-321. Exemption from registration under other acts.

Any membership camping operator registered with the ~~Commissioner~~*Director* under this chapter shall not be required to register or comply with the terms and requirements of the following:

1. The Virginia Condominium Act (§ 55-79.39 et seq.).

2. The Virginia Real Estate Time-Share Act (§ 55-360 et seq.).

3. The Virginia Securities Act (§ 13.1-501 et seq.).

§ 59.1-322. Other acts.

Registration with the ~~Commissioner~~*Director* by a membership camping operator shall not relieve such operator of the obligation of complying with the requirements of the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), if applicable.

§ 59.1-323. Denial, suspension, or revocation of registration; hearing; summary action.

A. The ~~Commissioner~~*Director* may deny an application for registration of a membership camping operator or may suspend, or revoke such registration if the ~~Commissioner~~*Director* finds that such action is necessary for the protection of purchasers or prospective purchasers or that any one of the following is true:

1. The membership camping operator has failed to comply with any provision of this chapter that materially affects the rights of purchasers, prospective purchasers or owners of membership camping contracts.

2. The membership camping operator's offering or execution of membership camping contracts is fraudulent.

3. The membership camping operator's application for registration or any amendment thereto is incomplete in any respect.

4. The membership camping operator has failed to file timely amendments to the application for registration or meet any other requirement of § 59.1-318 of this chapter.

5. The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility or facilities are planned without reasonable expectation that such facility will be completed within a reasonable time, or without the apparent means to ensure its completion.

6. The membership camping operator has permanently withdrawn from use all or any substantial portion of any campground and that (i) no adequate provision has been made to provide a substitute campground of comparable quality and attraction in the same general area within a reasonable time after such withdrawal, and (ii) the rights of all purchasers at the affected location have not expired, and (iii) the ~~Commissioner~~*Director* has found that the withdrawal is consistent with the protection of purchasers. Notwithstanding the foregoing, a membership camping operator may reserve the right to withdraw permanently from use all or any portion of a campground devoted to membership camping if, after the membership camping operator first represents to purchasers that the campground is or will be available for camping, the specific date upon which the withdrawal becomes effective is disclosed in writing to all purchasers at or prior to the time the membership camping contract is executed.

7. The membership camping operator has made any representation in any document or information filed with the ~~Commissioner~~*Director* which is false or misleading.

8. The membership camping operator has engaged or is engaging in any unlawful act or practice.

9. The membership camping operator has disseminated or caused to be disseminated, any false or misleading promotional materials in connection with a campground.

10. The membership camping operator does not have a reasonable ability to discharge the obligations imposed upon him by any membership camping contract.

B. Except as provided in subsection C of this section, before denying, suspending or revoking a registration, as provided in subsection A of this section, the ~~Commissioner~~*Director* shall issue to the membership camping operator a notice of opportunity for a hearing to consider the denial, suspension, or revocation.

C. If the ~~Commissioner~~*Director* finds that the public health, safety or welfare requires emergency action and incorporates this finding in his order, the ~~Commissioner~~*Director* may summarily deny, suspend or revoke a registration. The membership camping operator shall be given an opportunity within ten days after entry of such an order to appear before the ~~Commissioner~~*Director* and show cause why the summary order should not remain in effect. If good cause is shown, the ~~Commissioner~~*Director* shall vacate the summary order. If good cause is not shown, the summary order shall remain in effect. The membership camping operator shall have fifteen days thereafter within which to request a hearing, or the ~~Commissioner~~*Director* may within thirty days thereafter set the matter for a hearing.

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§ 59.1-324. Cease and desist orders; temporary order.

A. If it appears to the ~~Commissioner~~*Director* that any person has engaged or is engaging in any practice in violation of this chapter, he may issue an order directing the person to cease and desist provided that reasonable notice and an opportunity for a hearing shall be given to such person.

B. The ~~Commissioner~~*Director* may issue a temporary order pending the hearing which is effective on delivery to the person named in the order. The temporary order shall remain in effect until five days after the hearing required in subsection A above is held. In the event no hearing is requested by the person named in the order, the order shall become final within fifteen days after it is delivered.

§ 59.1-326. Membership camping operator's disclosure statement.

A. Every membership camping operator, salesperson, or other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee shall deliver to his purchaser a current membership camping operator's disclosure statement before execution by the purchaser of the membership camping contract and no later than the date shown on such contract.

B. The membership camping operator's disclosure statement shall consist of the following:

1. A cover page stating:

a. The words "Membership Camping Operator's Disclosure Statement" printed in boldfaced type of a minimum size of ten points, followed by,

b. The name and principal business address of the membership camping operator followed by,

c. A statement that the membership camping operator is in the business of offering for sale membership camping contracts, followed by,

d. The following, in printed boldfaced type of a minimum size of ten points:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. The following language, printed in boldfaced type of a minimum size of ten points after the appearance of the items required in subdivisions a through d above:

SHOULD YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL SUCH CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE 7TH CALENDAR DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST MAIL NOTICE OF YOUR INTENT TO CANCEL BY CERTIFIED UNITED STATES MAIL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

f. The following language below all statements required in subdivisions a through e above:

"Registration of the membership camping operator with the ~~Commissioner of the Virginia Department of Agriculture and Consumer Services~~ *Director of the Department of Consumer Affairs* does not constitute an approval or endorsement by the ~~Commissioner~~*Director* of the membership camping operator, his membership camping contract, or his campground."

2. The name of the membership camping operator and the address of his principal place of business:

a. The name, principal occupation and address of every director, partner, or trustee of the membership camping operator;

b. The name and address of each person owning or controlling an interest of ten percent or more in the membership camping operator;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the membership camping operator or its managing entity arising out of the violation or alleged violation of any federal, state, local or foreign law or regulation in connection with activities relating to the sale of campground memberships, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity; and

d. A statement of any unsatisfied judgments against the membership camping operator or its managing entity, the status of any pending suits involving the sale of membership camping contracts or the management of campgrounds to which the membership camping operator or its managing entity is a party and the status of any pending suits, administrative proceedings, or indictments of significance to the campground;

3. A brief description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers;

4. A brief description of the membership camping operator's experience in the membership camping business, including the length of time such operator has been in the membership camping business;

5. The location of each of the campgrounds which is to be available for use by purchasers and a brief description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided;

6. As to all memberships offered by the membership camping operator at each campground:

a. The form of membership offered;

b. The types and duration of memberships along with a summary of the major privileges, restrictions, and limitations applicable to each type; and

c. Provisions, if any, that have been made for public utilities at each campsite including water, electricity, telephone and sewerage facilities;

7. Any initial or special fee due from the purchaser together with a description of the purpose and method of calculating the fee;

8. A description of any liens, defects, or encumbrances affecting the campground;

9. A general description of any financing offered or available through the membership camping operator;

10. A statement that the purchaser has until midnight of the seventh calendar day following the signing of the membership campground contract to cancel the contract by proper notice to the membership camping operator;

11. A description of the insurance coverage that the membership camping operator provides for the benefit of purchasers, if any;

12. Any fees or charges that purchasers are or may be required to pay for the use of the campground or any facilities;

13. The extent to which financial arrangements, if any, have been provided for the completion of facilities together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete such facilities;

14. The name of the managing entity, if there is one, and the significant terms of any management contract, including but not limited to, the circumstances under which the membership camping operator may terminate the management contract;

15. Any services which the membership camping operator currently provides or expenses he pays which are expected to become the responsibility of the purchasers, including the projected liability which each such service or expense may impose on each purchaser;

16. A brief description of the ownership in or other right to use the campground which is to be transferred to each purchaser, together with the duration of any lease, license, franchise or reciprocal agreement entitling the membership camping operator or purchasers from him to use the campground, and any provisions in any such agreements which restrict or limit a purchaser's use of the campground;

17. a. A copy, whether by way of supplement or otherwise, of the rules, restrictions or covenants regulating the purchaser's use of the campground in Virginia and its facilities which are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions or covenants may be changed;

b. A summary, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of any other campgrounds, facilities, or any other amenities resulting from the purchase of, or used as an inducement to influence the purchase of, the membership camping contract;

18. A description of any restraints on the transfer of the membership camping contract;

19. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made;

20. A brief description of any grounds for forfeiture of a purchaser's membership camping contract;

21. A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which such withdrawal is to be permitted;

22. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the membership camping operator with that reciprocal program and whether the membership camping operator reserves the right to terminate such affiliation;

23. The following language, printed in boldfaced type of a minimum size of ten points:

The purchase of this membership camping contract should not be based on any representations that it is an investment or that it can be resold. The resale of a membership may be difficult; and

24. A statement that contains in boldfaced type the name, address, and telephone number of the ~~Virginia~~ Department of ~~Agriculture and Consumer Services, State Division of~~ Consumer Affairs and that states that that agency is the regulatory agency that handles consumer complaints regarding membership campgrounds.

C. The membership camping operator shall promptly amend his membership camping operator's disclosure statement to reflect any material change in the campground or its facilities. He shall also promptly file any such amendments with the ~~Commissioner~~*Director*.

§ 59.1-328. Membership camping contracts.

The membership camping operator shall deliver to his purchaser a fully executed copy of the membership camping contract, which contract shall include at least the following information:

1. The actual date the membership camping contract is executed by the purchaser.

2. The name of the membership camping operator and the address of his principal place of business.

3. The total financial obligation imposed upon the purchaser by the contract, including the initial purchase price and any additional charges which the purchaser may be required to pay.

4. A description of the nature and duration of the membership being purchased including any interest in real property.

5. A statement that the membership camping operator, salesperson, or any other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee is required by the Virginia Membership Camping Act (§ 59.1-311 et seq.) to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of such contract and that a failure to do so is a violation of the Act.

6. The following statement shall appear in the contract, under its own paragraph, and conspicuously placed:

PURCHASER'S NONWAIVABLE RIGHT TO CANCEL shall appear at the beginning of said paragraph in boldfaced type of a minimum of ten points, immediately preceding the following statement which shall appear in type no smaller than the other provisions of the contract:

YOU AS THE PURCHASER HAVE A NONWAIVABLE 7-CALENDAR-DAY RIGHT OF CANCELLATION. THIS RIGHT OF CANCELLATION IS FULLY EXPLAINED ON THE COVER SHEET OF THE MEMBERSHIP CAMPING OPERATOR'S DISCLOSURE STATEMENT. YOU ARE URGED TO REVIEW THE DISCLOSURE STATEMENT PRIOR TO THE EXECUTION OF THIS CONTRACT FOR A COMPLETE UNDERSTANDING OF YOUR RIGHT OF CANCELLATION. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND

CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

7. The full name of all salespersons involved in the execution of the membership camping contract.

8. A statement that contains, in boldface type, the name, address, and telephone number of the ~~Virginia~~ Department of ~~Agriculture~~ ~~and~~ ~~Consumer~~ ~~Services,~~ ~~Division~~ ~~of~~ Consumer Affairs, stating that that agency is the regulatory agency handling consumer complaints regarding membership campgrounds.

§ 59.1-329. Escrow and bonding.

A. All purchase money received from or on behalf of a purchaser in connection with the execution of a membership camping contract shall be deposited in an escrow or trust account designated solely for that purpose, which may be the membership camping operator's own escrow or trust account or that of his attorney's, until the expiration of the time for cancellation has expired unless a later time is provided in the membership camping contract. If the contract has not been canceled, any purchase money received from a purchaser may be released to the membership camping operator upon:

1. The conveying to the purchaser of the title to, interest in, or right or license to use the campground and facilities as required in the membership camping contract; or

2. The forfeiture of the purchase money by the purchaser under the terms of the membership camping contract.

B. In lieu of the obligations imposed by subsection A, the membership camping operator may file and maintain with the ~~Commissioner~~*Director* a surety bond issued in favor of the ~~Commissioner~~*Director* for the benefit of purchasers insuring the escrow of the purchase money until such time as it may be released as outlined in subsection A. Such bond may not be canceled until thirty days after written notice of cancellation is received by the ~~Commissioner~~*Director*. In lieu of such bond, the membership camping operator may post with the ~~Commissioner~~*Director* an irrevocable letter of credit in a form and content acceptable to the ~~Commissioner~~*Director*. The penalty of the bond or letter of credit shall be adjusted from time to time in accordance with the following schedule:

TOTAL AMOUNT OF PURCHASE MONEY HELD	PENALTY OF BOND
1. $0 to $200,000	$50,000
2. $200,000 to $500,000	$75,000
3. Over $500,000	$100,000

C. The amount of purchase money paid by purchasers held at any one time by the membership camping operator shall not exceed the amount for which the operator is bonded or the letter of credit is issued in accordance with the schedule set forth in subsection B.

D. In addition to any bonding requirements contained in this section, the membership camping operator shall file and maintain with the ~~Commissioner~~*Director* a payment and performance bond with surety issued in favor of the ~~Commissioner~~*Director* for the benefit of the purchasers and which guarantees the completion of all incomplete or planned facilities constructed or to be constructed in this Commonwealth as outlined or listed in either the membership camping contract or the membership camping operator's disclosure statement. The bond may not be canceled until thirty days after written notice of cancellation is received by the ~~Commissioner~~*Director*. In lieu of the bond the membership camping operator may post with the ~~Commissioner~~*Director* an irrevocable letter of credit. The surety bond or letter of credit shall be in a form and content acceptable to the ~~Commissioner~~*Director*. The penalty of the bond or letter of credit shall be in an amount equal to the cost of completing the incomplete or planned facilities as of the date of its issuance or as of the membership camping operator's application for continued registration date as provided in § 59.1-320.1, whichever is later.

§ 59.1-333. Nondisturbance provisions.

With respect to any property in this Commonwealth acquired and put into operation by a membership camping operator after July 1, 1985, the membership camping operator shall neither offer nor execute a membership camping contract in this Commonwealth granting the right to use such property until:

1. Each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement which includes the following provisions: (i) that the rights of the owner or owners of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers, and (ii) that any person who acquires the affected campground or any portion thereof by the exercise of any right of sale or foreclosure contained in such agreement shall take the same subject to

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the rights of the purchasers, and (iii) that the owner or owners of the blanket encumbrance shall not use or cause the property to be used in any manner which interferes with the right of the purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract. Such agreement shall be recorded in the clerk's office of the circuit court in which the property is located; and

2. Every financial institution providing a major hypothecation loan to the membership camping operator (the "hypothecation lender") which has a lien on, or security interest in the membership camping operator's ownership interest in the campground shall have executed and delivered a nondisturbance agreement and recorded such agreement in the clerk's office of the circuit court in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts; or

3. There shall have been delivered to and accepted by the ~~Commissioner~~*Director* a surety bond or letter of credit satisfying the following requirements: The surety bond or letter of credit shall be issued to the ~~Commissioner~~*Director* for the benefit of purchasers and shall be in an amount which is not less than 105 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. Such bond shall be issued by a surety authorized to do business in this Commonwealth and having sufficient net worth to satisfy the indebtedness. Such letter of credit shall be irrevocable and shall be drawn upon a bank, savings and loan, or financial institution and shall be in form and content acceptable to the ~~Commissioner~~*Director*. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lien holder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced at the option of the membership camping operator periodically in proportion to the reductions of the amounts secured by the blanket encumbrance.

4. The nondisturbance agreement may be amended provided the provisions of this section are not diminished or altered by the amendment.

§ 59.1-334. Investigations.

A. The ~~Commissioner~~*Director* may:

1. Make necessary public or private investigations within or without this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules and form hereunder.

2. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under this chapter, the ~~Commissioner~~*Director* may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the ~~Commissioner~~*Director* under this chapter, where witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. Upon failure to obey a subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may prescribe reasonable rules and regulations in order to implement the terms of this chapter and such rules and regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

F. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act.

§ 59.1-335.2. Definitions.

In this chapter the following words have the following meanings:

"Attorney General" means the Office of the Attorney General of Virginia.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.~~

"Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services business.

"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which (i) is furnished or (ii) is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

1. Credit or insurance to be used primarily for personal, family, or household purposes; or

2. Employment purposes; or

3. Other purposes which shall be limited to the following circumstances:

a. In response to the order of a court having jurisdiction to issue the order.

b. In accordance with the written instructions of the consumer to whom the report relates.

c. To a person which the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of, the consumer; or

(ii) Intends to use the information for employment purposes; or

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

The term "consumer report" does not include:

1. Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

2. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

3. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1.

"Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

1. Improving a consumer's credit record, history, or rating;

2. Obtaining an extension of credit for a consumer; or

3. Providing advice or assistance to a consumer with regard to either subdivision 1 or 2 herein.

"Credit services business" does not include:

(i) The making, arranging, or negotiating for a loan or extension of credit under the laws of this Commonwealth or the United States;

(ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or other federal insurance agency, or any credit union organized and chartered under the laws of this Commonwealth or the United States;

(iii) Any nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code (26 U.S.C. § 501 (c) (3));

(iv) Any person licensed as a real estate broker by this Commonwealth where the person is acting within the course and scope of that license;

(v) Any person licensed to practice law in this Commonwealth where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of that regulation;

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681v); or

(viii) Any person selling personal, family, or household goods to a consumer who, in connection with the seller's sale of its goods to the consumer, assists the consumer in obtaining a loan or extension of credit or extends credit to the consumer.

"Director" means Director of the Department of Consumer Affairs.

"Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

"File" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

§ 59.1-335.3. Registration; fees.

A. It shall be unlawful for any credit services business to offer, advertise, or execute or cause to be executed by a consumer any contract in this Commonwealth unless the credit services business at the time of the offer, advertisement, sale or execution of a contract has been properly registered with the ~~Commissioner~~*Director*. The ~~Commissioner~~*Director* may charge the credit services business a reasonable fee not exceeding $100 to cover the costs of filing.

B. The registration shall contain (i) the name and address of the credit services business, (ii) the name and address of the registered agent authorized to accept service of process on behalf of the credit services business, (iii) the name and address of any person who directly or indirectly owns or controls a ten percent or greater interest in the credit services business, and (iv) the name and address of the surety company that issued a bond pursuant to § 59.1-335.4 or the name and address of the bank that issued a letter of credit pursuant to § 59.1-335.4. The registration statement shall also contain either a full and complete disclosure of any litigation or unresolved complaint filed within the preceding five years with a governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business, or a notarized statement that there has been no litigation or unresolved complaint filed within the preceding five years with the governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business.

C. The credit services business shall attach to the registration statement a copy of (i) the information statement required under § 59.1-335.6, (ii) a copy of the contract which the credit services business intends to execute with its consumers, and (iii) evidence of the bond or trust account required under § 59.1-335.4.

D. The credit services business shall update the registration statement required under this section not later than ninety days after the date from which a change in the information required in the statement occurs.

E. Each credit services business registering under this section shall maintain a copy of the registration statement in its files. The credit services business shall allow a buyer to inspect the registration statement on request.

§ 59.1-335.4. Bond or letter of credit required.

A. Every credit services business, before it enters into a contract with a consumer, shall file and maintain with the ~~Commissioner~~*Director*, in form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in an amount equal to 100 times the standard fee charged by the credit services business but in no event shall the bond or letter of credit required under this section be less than $5,000 or greater than $50,000.

B. The required bond or letter of credit shall be in favor of the Commonwealth of Virginia for the benefit of any person who is damaged by any violation of this Act. The bond or letter of credit shall also be in favor of any person damaged by such practices. Any person claiming against the bond or letter of credit for a violation of this Act may maintain an action at law against the credit services business and against the surety or bank. The surety or bank shall be liable only for actual damages and attorneys fees and not for penalties permitted under §§ 59.1-206 and 59.1-335.12 or punitive damages

permitted under § 59.1-335.10. The aggregate liability of the surety or bank to all persons damaged by a credit services business violation of this chapter shall in no event exceed the amount of the bond or letter of credit.

C. The bond or letter of credit shall be maintained for a period of two years after the date that the credit services business ceases operation.

§ 59.1-429. Definitions.

As used in this chapter:

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

~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.~~

"Director" means the Director of the Department of Consumer Affairs.

"Information provider" means any person providing pay-per-call services.

"Long distance carrier" means any interexchange telephone company providing services within the Commonwealth.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed by telephone, through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Telephone company" means a certificated local exchange telephone company which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

§ 59.1-433. Investigations.

A. The ~~Commissioner~~*Director* may, with respect to pay-per-call service advertising or solicitation:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter, or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the ~~Commissioner~~*Director* pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey a subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-435. Definitions.

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

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

~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.~~

"Consumer product" means tangible personal property primarily used for personal, family, or household purposes.

"Director" means the Director of the Department of Consumer Affairs.

"Extended service contract" or "contract" means a written agreement which is in effect for at least one year whereby the purchaser is indemnified against the cost of repair or replacement of a consumer product which is defective in material or workmanship in return for the payment of a segregated charge by the purchaser.

"Extended service contract provider" or "provider" means any person or entity other than a public service corporation supervised by the State Corporation Commission, who is the original manufacturer or seller and who solicits, offers, advertises, or executes extended service contracts. Such definition includes the obligor of the contract sold, solicited, offered, advertised or executed by the original manufacturer, seller or obligor.

"Obligor" means the person who is contractually obligated to the purchaser to provide services under the extended service contract and who is (i) the original manufacturer or seller of the merchandise covered by the extended service contract, (ii) acting through or with the written consent of the original

manufacturer, seller or purchaser of the merchandise covered by the extended service contract, or (iii) acting through or with the written consent of a manufacturer or seller of merchandise similar to the merchandise covered by the extended service contract.

"Purchaser" means a person who enters into an extended service contract with an extended service contract provider.

§ 59.1-436. Registration; fees; exemptions.

A. It shall be unlawful for any extended service contract provider to offer, advertise, or execute or cause to be executed by the purchaser any extended service contract for a consumer product in this Commonwealth unless the obligor at the time of the solicitation, offer, advertisement, sale, or execution of a contract has been properly registered with the ~~Commissioner~~*Director*. The registration shall (i) disclose the address, ownership, and nature of business of the obligor; (ii) be renewed annually on July 1; and (iii) be accompanied by a fee of $300 per registration and annual renewal. A registration application or registration renewal will not be considered filed until all required information and fees are received by the ~~Commissioner~~*Director*. Any obligor who fails to register prior to the sale of an extended service contract shall pay a late filing fee of $100 for each 30-day period, or portion thereof, that the registration is late. An obligor who fails to timely renew its registration shall pay a late fee of $50 for each 30-day period, or portion thereof, that the annual renewal filing is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of ~~Agriculture and Consumer Services~~ *Consumer Affairs* to be used in the administration of this chapter.

C. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

D. Licensed or registered motor vehicle dealers, as defined in § 46.2-1500, shall not be subject to the provisions of this chapter.

E. Extended service contract providers who comply with this section and the employees of such providers who market, sell or offer to sell extended service contracts on behalf of the provider shall not be subject to the provisions of Title 38.2.

§ 59.1-437. Bond or letter of credit required.

A. Every extended service contract obligor, before it is registered, shall file and maintain with the ~~Commissioner~~*Director*, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in the amount of $10,000. Additional bond or letter of credit amounts shall be similarly filed with the ~~Commissioner~~*Director* and shall be adjusted from time to time, in accordance with the following schedule:

Total Amount of Unexpired Extended Service Contracts	Amount of Bond or Letter of Credit
$0 to $50,000	$10,000
$50,001 to $300,000	$40,000
$300,001 to $750,000	$65,000
$750,001 or more	$90,000

The total amount of unexpired extended service contracts shall be the total consideration paid by all purchasers to the extended service obligor for all extended service contracts currently in effect.

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth for the benefit of purchasers of extended service contracts for consumer products in the event that the extended service contract obligor does not fulfill its obligations under such contracts for any reason, including insolvency or bankruptcy.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the ~~Commissioner~~*Director*.

D. In order to ensure the faithful performance of a third party obligor's obligations to its contract holders, each third party obligor shall furnish proof of its financial stability by complying with either of the following:

1. The third party obligor shall show that it has a net worth of at least $100 million by providing the ~~Commissioner~~*Director* with a copy of the third party obligor's most recent annual audited financial statement; or

2. The third party obligor shall show a net worth of the third party obligor or its parent company of at least $100 million by providing the ~~Commissioner~~*Director* with a copy of the third party obligor's, or if the third party obligor's financial statements are consolidated with those of its parent company, the third party obligor's parent company's, most recent Form 10-K or Form 20-F filed with the Securities

and Exchange Commission, provided the Form 10-K or Form 20-F was filed with the Securities and Exchange Commission within the last calendar year. If the third party obligor's parent company's Form 10-K or Form 20-F is filed to meet the third party obligor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the third party obligor relating to service contracts sold by the third party obligor in this Commonwealth.

E. In lieu of compliance with subsection D, a third party obligor may demonstrate financial responsibility by filing with the ~~Commissioner~~*Director* a copy of a liability insurance policy issued by an insurer authorized to transact business in this Commonwealth and which covers 100 percent of the obligor's service contract liabilities, including the administration of claims and the cost for such administration. Reimbursement insurance policies filed pursuant to this section may not be cancelled by either the third party obligor or the issuing insurer without providing 60 days' notice to the ~~Commissioner~~*Director*.

§ 59.1-439. Investigations.

A. The ~~Commissioner~~*Director* may, with respect to extended service contracts:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the ~~Commissioner~~*Director* pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-440. Production of records.

Every extended service contract obligor, upon written request of the ~~Commissioner~~*Director,* shall make available to the ~~Commissioner~~*Director* its extended service contract records for inspection and copying to enable the ~~Commissioner~~*Director* to reasonably determine compliance with this chapter. Every obligor shall maintain a true copy of each contract executed between the obligor and a purchaser, and each contract shall be maintained for its term.

§ 59.1-441.2. Registration; fees.

A. It shall be unlawful for any legal services plan seller to offer, advertise, or execute, or cause to be executed by the subscriber, any subscription contract in the Commonwealth unless the legal services plan seller at the time of the offer, advertisement, sale, or execution of a subscription contract has been properly registered with the ~~Commissioner~~*Director*. The registration shall (i) disclose the address, ownership, and affiliation with the legal services organization and such other information as the ~~Commissioner~~*Director* may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee of $50 per each annual registration. Further, the registration shall be accompanied by a late fee of $25 if the registration renewal is neither postmarked nor received on or before July 1.

B. Any legal services plan seller that sells a subscription contract prior to registering pursuant to this section shall pay a late filing fee of $100 for each 30-day period the registration is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

E. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of ~~Agriculture and Consumer Services~~ *Consumer Affairs* to be used in the administration of this chapter.

F. All insurance agent licenses issued by the State Corporation Commission including authority to sell legal services plan subscription contracts shall continue in effect for a period of 90 days following

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the effective date of this chapter, during which time those holding such authority from the State Corporation Commission shall apply for registration with the Department. At the end of the 90-day period, no insurance agent license shall include the authority to sell legal services plan subscription contracts.

§ 59.1-441.4. Investigations.

A. The ~~Commissioner~~*Director* may, with respect to the offering of subscription contracts:

1. Make necessary public and private investigations within or without the Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath, or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the ~~Commissioner~~*Director* pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-441.5. Production of records.

Every legal services plan seller shall, upon written request of the ~~Commissioner~~*Director*, make available to the ~~Commissioner~~*Director* its legal services plan contract records for inspection and copying to enable the ~~Commissioner~~*Director* to reasonably determine compliance with this chapter. Every legal services plan seller shall maintain a true copy of each subscription contract executed between the subscriber and the legal services plan, and each contract shall be maintained for its term.

§ 59.1-445. Definitions.

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

"Accommodations" means any real property improvement provided by the travel club to its members for lodging purposes, including, without limitation, condominiums, hotels, motels or motor courts.

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

"Carrier" means any person engaged in the business of transporting persons for hire.

~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.~~

"Contract" shall be synonymous with "travel services agreement."

"Director" means the Director of the Department of Consumer Affairs.

"Offer," or "offering" means any act to sell, solicit, induce, advertise, or execute a travel services agreement.

"Purchaser" means any person who enters into an agreement in whole or in part within this Commonwealth with a travel club for travel services.

"Travel club" means a for-profit organization that provides, in return for either an advance fee for membership or an annual charge for membership of more than $100, the privilege for its members or participants to arrange or obtain future travel services through or from the organization. Travel club shall exclude credit card issuers whose cards are honored at any one time by 100 or more merchants, other than the issuer.

"Travel services" means transportation by carrier; accommodations; rental of motor vehicles; or any other service related to travel. For purposes of this chapter, "travel services" shall not include investments in time shares.

"Travel services agreement" means the agreement executed in whole or in part in this Commonwealth between the travel club and the purchaser of the membership in such club and does not include arrangements or agreements for specific travel transportation, accommodation or other specific services.

§ 59.1-446. Registration; fees.

A. It shall be unlawful for any travel club to offer or cause to be executed in this Commonwealth by the purchaser any travel services agreement unless such travel club at the time of such offering, or execution thereof has been properly registered with the ~~Commissioner~~*Director*. Such registration shall (i) disclose the address, ownership, and nature of business of the travel club and (ii) be accompanied by an

annual fee of $350 per registration and annual renewal.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of ~~Agriculture and Consumer Services~~ *Consumer Affairs* to be used in the administration of this chapter.

§ 59.1-447. Bond or letter of credit required.

A. Every travel club, before entering into a travel services agreement with a purchaser of travel services, shall file and maintain with the ~~Commissioner~~*Director*, in a form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Insurance Deposit Corporation, or cash in the amounts indicated below:

Number of Contracts	Amount of Cash, Bond, or Letter of Credit
0 to 1500	$60,000
1501 to 1750	$70,000
1751 to 2000	$80,000
2001 or more	$100,000

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth of Virginia for the benefit of any purchaser who is damaged by any violation of this chapter.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be canceled or terminated except with the consent of the ~~Commissioner~~*Director*. Bonds may be withdrawn by giving sixty-day advance written notice to the ~~Commissioner~~*Director*, thereby releasing the surety from accruing future liability beyond the effective date of withdrawal. Such withdrawal shall not release the surety or otherwise cancel or terminate any liability existing at the time of the effective date of the withdrawal.

§ 59.1-447.1. Escrow of deposits.

A. Any deposit made in connection with the execution of a travel services agreement shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the travel club upon expiration of the purchaser's cancellation period, provided the purchaser's right of cancellation has not been exercised, or (ii) delivered to the travel club because of purchaser's default under the travel services agreement or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The travel club shall disclose in the travel services agreement that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the travel club reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the travel club. Both disclosures shall appear in boldface type of a minimum size of ten points.

C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to subsection A, in favor of all purchasers. The bond shall be in an amount equal to the total of the deposits in escrow at any given time or $25,000, whichever is greater. Such bond shall be filed with the ~~Commissioner~~*Director* and shall be maintained for so long as the travel club offers travel services in Virginia. The bond shall be with a surety company authorized to do business in Virginia. The travel club may post cash in lieu of the bond.

§ 59.1-448.1. Public offering statement.

A. The travel club shall prepare and distribute to any prospective purchaser, before execution thereby of a travel services agreement, a public offering statement which discloses fully and accurately the characteristics of the travel club and its travel services, the membership offered and shall make known to prospective purchasers all material circumstances affecting the travel club and its travel services. The proposed public offering statement shall be filed with the ~~Commissioner~~*Director*, shall be in a form prescribed by his rules and shall include the following to the extent applicable:

1. The name and principal address of the travel club, including:

a. The name, principal occupation and address of every director, partner, or trustee of the travel club;

b. The name and address of each person owning or controlling an interest of twenty percent or more in the travel club;

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c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the travel club for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to the rendition of travel services;

d. A statement of any unsatisfied judgments against the travel club, the status of any pending suits involving the rendition of travel services to which the travel club or any general partner, executive officer, director, or majority stockholder thereof is a defending party, and the status of any pending suits of significance to the travel club; and

e. The name and address of the travel club's agent for service of process.

2. A general description of the travel services offered by the travel club which are made available to purchasers.

3. A general description of the travel club and its more significant features including without limitation the duration of membership, the types of membership offered, all fees, costs, and charges imposed on the purchaser thereby, and any provision for its cancellation by the purchaser other than by default.

4. Provisions, if any, that have been made by the travel club for fulfilling the demand of the purchaser for accommodations in lodgings.

5. If the travel club's net worth is less than $500,000, a copy of the travel club's current audited balance sheet; if such club's net worth exceeds said amount, a statement by such travel club that its equity exceeds $500,000.

6. Any initial or special fee due from the purchaser for membership in the travel club together with a description of the purpose and method of calculating the fee.

7. A general description of any financing offered by or available through the travel club.

8. A statement that the purchaser has a right to cancel the travel service agreement directing the purchaser to see such travel services agreement for the particulars of such right of cancellation.

9. Any restraints on alienation of the travel club membership by the purchaser.

10. A description of any insurance coverage provided for the benefit of the purchaser.

11. Any services which the travel club provides or expense it pays and which it expects may become at any subsequent time an expense of the purchaser and which is to be paid thereby.

12. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

13. Any other information required by the ~~Commissioner~~*Director* to assure full and fair disclosure to prospective purchasers.

14. A statement, expressed in terms of a percentage, of the number of purchasers who applied for accommodations from the travel club during the preceding year in contrast to the total number of purchasers who actually received such accommodations for the same preceding year. For purposes of calculation, an application shall be treated as only one application notwithstanding that the purchaser contemporaneously requests accommodations at a number of different real property improvements. Such statement shall be prepared by an independent certified public accounting firm and may take the form of an exhibit to the public offering statement.

B. If any prospective purchaser of a travel club membership is offered the opportunity to subscribe to or participate in any exchange program registered under the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;

2. The name and address of the exchange company together with the names of the principal officers and all directors of the exchange company;

3. A statement of whether the exchange company or any of its officers or directors are holders of a ten percent or greater interest in the travel club;

4. A statement of whether the travel club or any of its officers or directors are holders of a ten percent or greater interest in an exchange company;

5. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the travel club; and

6. A brief narrative description of the procedure whereby exchanges are conducted.

C. The travel club shall amend the public offering statement to reflect any material change in the travel club membership. The travel club shall file with the ~~Commissioner~~*Director* the public offering statement amended to reflect any material change. The ~~Commissioner~~*Director* may at any time require the travel club to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers.

The following events shall not be deemed to be a material change necessitating an amendment to the public offering statement:

1. A change correcting spelling, grammar, omissions, or other similar errors not affecting the

substance of the public offering statement;

2. A change in the fees, dues, or assessments of the purchasers or other similar recurring expense items;

3. A change which is an aspect or result of the orderly development, operation, or management of the travel club in accordance with the travel services agreement, including, without limitation, the addition or deletion of accommodations, transportation or other service related to travel;

4. A change resulting from the adoption of a new budget;

5. A change occurring in the issuance of an exchange company's updated annual report or disclosure documents provided upon its receipt by the travel club it shall commence distribution of same in lieu of all others; and

6. A change in the ownership of the travel club, provided the change affects less than an ownership interest of twenty percent.

§ 59.1-451. Investigations.

A. The ~~Commissioner~~*Director* may, with respect to a travel club or travel services agreements:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated, or is about to violate, the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the ~~Commissioner~~*Director* determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations and, upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things; the identity and location of persons having knowledge of relevant facts; or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the ~~Commissioner~~*Director* pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the ~~Commissioner~~*Director* and upon reasonable notice to all persons affected thereby, the ~~Commissioner~~*Director* may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 59.1-452. Production of records.

Every travel club, upon written request of the ~~Commissioner~~*Director*, shall make available to the ~~Commissioner~~*Director* its travel-services records for inspection and copying to enable the ~~Commissioner~~*Director* to reasonably determine compliance with this chapter. Every club promoter shall maintain a true copy of each agreement between the travel club and a purchaser, and such agreement shall be maintained for its term plus two years.

§ 59.1-473. Legal action or arbitration.

A. The remedies afforded by this chapter are cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

B. In addition to any other remedies otherwise available to him, any consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. Such damages may also be recovered through the arbitration mechanism described in subsection C.

C. All persons subject to this chapter shall have the option of submitting any disputes arising under the provisions of this chapter to the arbitration mechanism established and administered by the ~~Dispute Resolution Unit of the Office of Consumer Affairs, Division of Consumer Protection, pursuant to subdivision A 5 of § 3.1-14~~ *Department of Consumer Affairs*. Such mechanism shall ensure that the arbitration is conducted by a neutral third party.

§ 59.1-516. Investigative authority.

A. The ~~Commissioner~~*Director* of the Department of ~~Agriculture and~~ Consumer ~~Services~~*Affairs*, or his duly authorized representative, shall have the power to inquire into possible violations of this chapter, and to request, but not to require, an appropriate legal official to bring an action under § 59.1-517 with respect to such violation.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in or is about to engage in any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

2. That Chapter 3.1 (§§ 3.1-18.1 through 3.1-18.3) of Title 3.1 of the Code of Virginia is repealed.

3. That as of July 1, 2008, the Department of Consumer Affairs shall be deemed successor in

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interest to the Office of Consumer Affairs of the Department of Agriculture and Consumer Services to the extent that this act transfers powers and duties. All right, title, and interest in and to any real or tangible personal property vested in the Office of Consumer Affairs of the Department of Agriculture and Consumer Affairs shall be transferred to and taken as standing in the name of the Department of Consumer Affairs.

4. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

5. That all rules and regulations adopted by the Department of Agriculture and Consumer Services that are in effect as of July 1, 2008, and that pertain to the subject of this act, shall remain in full force and effect until altered, amended, or rescinded by the Department of Consumer Affairs.

6. That any monetary savings realized from the implementation of this act shall be applied to the Transportation Trust Fund established pursuant to § 33.1-23.03:1.