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## SENATE BILL NO. 1032

Offered January 14, 2015

Prefiled January 12, 2015

A *BILL to amend and reenact §§ 1-404, 2.2-221, 2.2-507, 2.2-509.1, 2.2-1119, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.7, 2.2-3711, 2.2-3802, 2.2-4024, 2.2-4345, 3.2-1010, 4.1-100, 4.1-101, 4.1-103, 4.1-103.1, 4.1-119, 4.1-121, 4.1-124, 4.1-128, 4.1-209.1, 4.1-212.1, 4.1-325, 9.1-101, 9.1-102, 9.1-400, 9.1-500, 9.1-801, 15.2-2288.3, 15.2-2288.3:1, 18.2-57, 18.2-246.6, 18.2-308, 18.2-308.03, 18.2-308.012, 18.2-371.2, 19.2-81, 19.2-386.21, 19.2-389, 22.1-206, 23-7.4:1, 32.1-357, 33.2-613, 48-17.1, 51.1-212, 58.1-3, 58.1-3651, 59.1-148.3, 65.2-402, and 65.2-402.1 of the Code of Virginia; to amend and reenact the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding sections numbered 4.1-101.01 through 4.1-101.012; and to repeal § 4.1-102 of the Code of Virginia, relating to alcoholic beverage control; Virginia Alcoholic Beverage Control Authority Act of 2015.*

Patrons—McDougle, Puller and Chafin

Referred to Committee on Rehabilitation and Social Services

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

1. That §§ 1-404, 2.2-221, 2.2-507, 2.2-509.1, 2.2-1119, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.7, 2.2-3711, 2.2-3802, 2.2-4024, 2.2-4345, 3.2-1010, 4.1-100, 4.1-101, 4.1-103, 4.1-103.1, 4.1-119, 4.1-121, 4.1-124, 4.1-128, 4.1-209.1, 4.1-212.1, 4.1-325, 9.1-101, 9.1-102, 9.1-400, 9.1-500, 9.1-801, 15.2-2288.3, 15.2-2288.3:1, 18.2-57, 18.2-246.6, 18.2-308, 18.2-308.03, 18.2-308.012, 18.2-371.2, 19.2-81, 19.2-386.21, 19.2-389, 22.1-206, 23-7.4:1, 32.1-357, 33.2-613, 48-17.1, 51.1-212, 58.1-3, 58.1-3651, 59.1-148.3, 65.2-402, and 65.2-402.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 4.1-101.01 through 4.1-101.012 as follows:

**§ 1-404. Licensing sale of mixed alcoholic beverages on lands ceded to or owned by United States.**

The Virginia Alcoholic Beverage Control ~~Board~~ *Authority* may license the sale of mixed alcoholic beverages as defined in Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 at places primarily engaged in the sale of meals on lands ceded by the Commonwealth to the United States or owned by the government of the United States or any agency thereof provided that such lands are used as ports of entry or egress to and from the United States, and provided that such lands lie within or partly within the boundaries of any county in this Commonwealth which permits the lawful dispensing of mixed alcoholic beverages. The ~~Board is hereby authorized to~~ *Board of Directors of the Authority may* adopt rules and regulations governing the sale of such spirits, and to fix the fees for such licenses, within the limits fixed by general law.

**§ 2.2-221. Position established; agencies for which responsible; additional powers and duties.**

A. The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: ~~Department of the Virginia~~ *Alcoholic Beverage Control Authority*, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. The Secretary shall by reason of professional background have knowledge of military affairs, law enforcement, public safety, or emergency management and preparedness issues, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Work with and through others, including federal, state, and local officials as well as the private sector, to develop a seamless, coordinated security and preparedness strategy and implementation plan.

2. Serve as the point of contact with the federal Department of Homeland Security.

3. Provide oversight, coordination, and review of all disaster, emergency management, and terrorism management plans for the state and its agencies in coordination with the Virginia Department of Emergency Management and other applicable state agencies.

4. Work with federal officials to obtain additional federal resources and coordinate policy development and information exchange.

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59 5. Work with and through appropriate members of the Governor's Cabinet to coordinate working  
60 relationships between state agencies and take all actions necessary to ensure that available federal and  
61 state resources are directed toward safeguarding Virginia and its citizens.

62 6. Designate a Commonwealth Interoperability Coordinator to ensure that all communications-related  
63 preparedness federal grant requests from state agencies and localities are used to enhance  
64 interoperability. The Secretary shall ensure that the annual review and update of the statewide  
65 interoperability strategic plan is conducted as required in § 2.2-222.2. The Commonwealth  
66 Interoperability Coordinator shall establish an advisory group consisting of representatives of state and  
67 local government and constitutional offices, broadly distributed across the Commonwealth, who are  
68 actively engaged in activities and functions related to communications interoperability.

69 7. Serve as one of the Governor's representatives on regional efforts to develop a coordinated  
70 security and preparedness strategy, including the National Capital Region Senior Policy Group organized  
71 as part of the federal Urban Areas Security Initiative.

72 8. Serve as a direct liaison between the Governor and local governments and first responders on  
73 issues of emergency prevention, preparedness, response, and recovery.

74 9. Educate the public on homeland security and overall preparedness issues in coordination with  
75 applicable state agencies.

76 10. Serve as chairman of the Secure Commonwealth Panel.

77 11. Encourage homeland security volunteer efforts throughout the state.

78 12. Coordinate the development of an allocation formula for State Homeland Security Grant Program  
79 funds to localities and state agencies in compliance with federal grant guidance and constraints. The  
80 formula shall be, to the extent permissible under federal constraints, based on actual risk, threat, and  
81 need.

82 13. Work with the appropriate state agencies to ensure that regional working groups are meeting  
83 regularly and focusing on regional initiatives in training, equipment, and strategy to ensure ready access  
84 to response teams in times of emergency and facilitate testing and training exercises for emergencies and  
85 mass casualty preparedness.

86 14. Provide oversight and review of the Virginia Department of Emergency Management's annual  
87 statewide assessment of local and regional capabilities, including equipment, training, personnel,  
88 response times, and other factors.

89 15. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts,  
90 investment bankers, superintendents, managers, and such other employees and agents as may be  
91 necessary, and fix their compensation to be payable from funds made available for that purpose.

92 16. Receive and accept from any federal or private agency, foundation, corporation, association, or  
93 person grants, donations of money, real property, or personal property for the benefit of the  
94 Commonwealth, and receive and accept from the Commonwealth or any state, any municipality, county,  
95 or other political subdivision thereof, or any other source, aid or contributions of money, property, or  
96 other things of value, to be held, used, and applied for the purposes for which such grants and  
97 contributions may be made.

98 17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or  
99 other things of value to be held, used, and applied to carry out these requirements subject to the  
100 conditions upon which the aid, grants, or contributions are made.

101 18. Make grants to local governments, state and federal agencies, and private entities with any funds  
102 of the Secretary available for such purpose.

103 19. Take any actions necessary or convenient to the exercise of the powers granted or reasonably  
104 implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

105 **§ 2.2-507. Legal service in civil matters.**

106 A. All legal service in civil matters for the Commonwealth, the Governor, and every state  
107 department, institution, division, commission, board, bureau, agency, entity, official, court, or judge,  
108 including the conduct of all civil litigation in which any of them are interested, shall be rendered and  
109 performed by the Attorney General, except as provided in this chapter and except for any litigation  
110 concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular  
111 counsel shall be employed for or by the Governor or any state department, institution, division,  
112 commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or  
113 through one or more of his assistants any number of state departments, institutions, divisions,  
114 commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same  
115 transaction or that are parties in the same civil or administrative proceeding and may represent multiple  
116 interests within the same department, institution, division, commission, board, bureau, agency, or entity.  
117 The soil and water conservation district directors or districts may request legal advice from local, public,  
118 or private sources; however, upon request of the soil and water conservation district directors or districts,  
119 the Attorney General shall provide legal service in civil matters for such district directors or districts.

120 B. The Attorney General may represent personally or through one of his assistants any of the

following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents, or employees of the *Virginia Alcoholic Beverage Control Board Authority*;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;
13. Conservation officers of the Department of Conservation and Recreation; or
14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

#### **§ 2.2-509.1. Powers of investigators; enforcement of certain tobacco laws.**

Investigators with the Office of the Attorney General as designated by the Attorney General shall be authorized to seize cigarettes as defined in § 3.2-4200, which are sold, possessed, distributed, transported, imported, or otherwise held in violation of § 3.2-4207 or 58.1-1037. In addition, such investigators shall be authorized to accompany and participate with special agents of the *Virginia Alcoholic Beverage Control Board Authority* or other law-enforcement officials engaging in an enforcement action under § 3.2-4207 or 58.1-1037.

#### **§ 2.2-1119. Cases in which purchasing through Division not mandatory.**

A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies, and nonprofessional services through the Division shall not be mandatory in the following cases:

1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor and materials;
2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state funds;
3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be considered perishable within the meaning of this subdivision, unless so classified by the Division;
4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

182 5. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board ;  
183 however, this exception may include Authority including office stationery and supplies, office equipment,  
184 and janitorial equipment and supplies; and; however coal and fuel oil for heating purposes shall not be  
185 included except when authorized in writing by the Division;

186 6. Binding and rebinding of the books and other literary materials of libraries operated by the  
187 Commonwealth or under its authority;

188 7. Printing of the records of the Supreme Court; and

189 8. Financial services, including without limitation, underwriters, financial advisors, investment  
190 advisors and banking services.

191 B. Telecommunications and information technology goods and services of every description shall be  
192 procured as provided by § 2.2-2012.

193 **§ 2.2-2696. Substance Abuse Services Council.**

194 A. The Substance Abuse Services Council (the Council) is established as an advisory council, within  
195 the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is  
196 to advise and make recommendations to the Governor, the General Assembly, and the State Board of  
197 Behavioral Health and Developmental Services on broad policies and goals and on the coordination of  
198 the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.

199 B. The Council shall consist of 29 members. Four members of the House of Delegates shall be  
200 appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional  
201 representation contained in the Rules of the House of Delegates, and two members of the Senate shall  
202 be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing  
203 the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one  
204 member representing the Substance Abuse Certification Alliance of Virginia, two members representing  
205 the Virginia Association of Community Services Boards, and two members representing statewide  
206 consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral  
207 Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department  
208 of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of  
209 Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social  
210 Services; the Chief Operating Executive Officer of the Department of Virginia Alcoholic Beverage  
211 Control Authority; the Executive Director of the Virginia Foundation for Healthy Youth or his designee;  
212 the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his  
213 designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs,  
214 the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council  
215 and the Prevention Task Force of the Virginia Association of Community Services Boards.

216 C. Appointments of legislative members and heads of agencies or representatives of organizations  
217 shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's  
218 appointments of the seven nonlegislative citizen members shall be staggered as follows: two members  
219 for a term of one year, three members for a term of two years, and two members for a term of three  
220 years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an  
221 appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a  
222 chairman from among the members for a two-year term. No member shall be eligible to serve more than  
223 two consecutive terms as chairman.

224 No person shall be eligible to serve more than two successive terms, provided that a person  
225 appointed to fill a vacancy may serve two full successive terms.

226 D. The Council shall meet at least four times annually and more often if deemed necessary or  
227 advisable by the chairman.

228 E. Members of the Council shall receive no compensation for their services but shall be reimbursed  
229 for all reasonable and necessary expenses incurred in the performance of their duties as provided in  
230 §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of  
231 Behavioral Health and Developmental Services.

232 F. The duties of the Council shall be:

233 1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of  
234 Behavioral Health and Developmental Services;

235 2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine  
236 all agency plans into a comprehensive interagency state plan for substance abuse services;

237 3. To review and comment on annual state agency budget requests regarding substance abuse and on  
238 all applications for state or federal funds or services to be used in substance abuse programs;

239 4. To define responsibilities among state agencies for various programs for persons with substance  
240 abuse and to encourage cooperation among agencies; and

241 5. To make investigations, issue annual reports to the Governor and the General Assembly, and make  
242 recommendations relevant to substance abuse upon the request of the Governor.

243 G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the

Department of Behavioral Health and Developmental Services.

**§ 2.2-2818. Health and related insurance for state employees.**

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or

association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's

primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the

428 treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research  
429 associated with the clinical trial, or (iii) the cost of the investigational drug or device.

430 Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be  
431 provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such  
432 treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a  
433 Phase I clinical trial.

434 The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- 435 a. The National Cancer Institute;
- 436 b. An NCI cooperative group or an NCI center;
- 437 c. The FDA in the form of an investigational new drug application;
- 438 d. The federal Department of Veterans Affairs; or
- 439 e. An institutional review board of an institution in the Commonwealth that has a multiple project  
440 assurance contract approved by the Office of Protection from Research Risks of the NCI.

441 The facility and personnel providing the treatment shall be capable of doing so by virtue of their  
442 experience, training, and expertise.

443 Coverage under this subdivision shall apply only if:

- 444 (1) There is no clearly superior, noninvestigational treatment alternative;
- 445 (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will  
446 be at least as effective as the noninvestigational alternative; and
- 447 (3) The patient and the physician or health care provider who provides services to the patient under  
448 the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to  
449 procedures established by the plan.

450 16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a  
451 covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered  
452 employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized  
453 guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours  
454 referenced when the attending physician, in consultation with the covered employee, determines that a  
455 shorter hospital stay is appropriate.

456 17. Include coverage for biologically based mental illness.

457 For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous  
458 condition caused by a biological disorder of the brain that results in a clinically significant syndrome  
459 that substantially limits the person's functioning; specifically, the following diagnoses are defined as  
460 biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective  
461 disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder,  
462 attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

463 Coverage for biologically based mental illnesses shall neither be different nor separate from coverage  
464 for any other illness, condition or disorder for purposes of determining deductibles, benefit year or  
465 lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits,  
466 copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and  
467 coinsurance factors.

468 Nothing shall preclude the undertaking of usual and customary procedures to determine the  
469 appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this  
470 option, provided that all such appropriateness and medical necessity determinations are made in the same  
471 manner as those determinations made for the treatment of any other illness, condition or disorder  
472 covered by such policy or contract.

473 18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass  
474 surgery or such other methods as may be recognized by the National Institutes of Health as effective for  
475 the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits,  
476 deductibles, copayments and coinsurance factors that are no less favorable than for physical illness  
477 generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other  
478 criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid  
479 obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age,  
480 height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index  
481 (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical  
482 conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of  
483 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in  
484 kilograms divided by height in meters squared.

485 19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal  
486 occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic  
487 imaging, in accordance with the most recently published recommendations established by the American  
488 College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family  
489 histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer



screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

22. Notwithstanding any provision of this section to the contrary, every plan established in accordance with this section shall comply with the provisions of § 2.2-2818.2.

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means:

1. American Hospital Formulary Service - Drug Information;
2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or
3. Elsevier Gold Standard's Clinical Pharmacology.

"State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; and interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24; and employees of the Virginia Alcoholic Beverage Control Authority as provided in § 4.1-101.06.

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management that utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be available in each planning district shall be a high deductible health plan that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan.

551 This subsection shall not apply to any state agency authorized by the Department to establish and  
552 administer its own health insurance coverage plan separate from the plan established by the Department.

553 H. Any self-insured group health insurance plan established by the Department of Human Resource  
554 Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary  
555 to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least  
556 annually, and updated as necessary in consultation with and with the approval of a pharmacy and  
557 therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists,  
558 (ii) physicians, and (iii) other health care providers.

559 If the plan maintains one or more drug formularies, the plan shall establish a process to allow a  
560 person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs  
561 in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable  
562 investigation and consultation with the prescriber, the formulary drug is determined to be an  
563 inappropriate therapy for the medical condition of the person. The plan shall act on such requests within  
564 one business day of receipt of the request.

565 Any plan established in accordance with this section shall be authorized to provide for the selection  
566 of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are  
567 delivered to the covered person's address by mail, common carrier, or delivery service. As used in this  
568 subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the  
569 Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive  
570 drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery  
571 service.

572 I. Any plan established in accordance with this section requiring preauthorization prior to rendering  
573 medical treatment shall have personnel available to provide authorization at all times when such  
574 preauthorization is required.

575 J. Any plan established in accordance with this section shall provide to all covered employees written  
576 notice of any benefit reductions during the contract period at least 30 days before such reductions  
577 become effective.

578 K. No contract between a provider and any plan established in accordance with this section shall  
579 include provisions that require a health care provider or health care provider group to deny covered  
580 services that such provider or group knows to be medically necessary and appropriate that are provided  
581 with respect to a covered employee with similar medical conditions.

582 L. The Department of Human Resource Management shall appoint an Ombudsman to promote and  
583 protect the interests of covered employees under any state employee's health plan.

584 The Ombudsman shall:

585 1. Assist covered employees in understanding their rights and the processes available to them  
586 according to their state health plan.

587 2. Answer inquiries from covered employees by telephone and electronic mail.

588 3. Provide to covered employees information concerning the state health plans.

589 4. Develop information on the types of health plans available, including benefits and complaint  
590 procedures and appeals.

591 5. Make available, either separately or through an existing Internet web site utilized by the  
592 Department of Human Resource Management, information as set forth in subdivision 4 and such  
593 additional information as he deems appropriate.

594 6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the  
595 disposition of each such matter.

596 7. Upon request, assist covered employees in using the procedures and processes available to them  
597 from their health plan, including all appeal procedures. Such assistance may require the review of health  
598 care records of a covered employee, which shall be done only in accordance with the federal Health  
599 Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical  
600 records shall be maintained in accordance with the confidentiality and disclosure laws of the  
601 Commonwealth.

602 8. Ensure that covered employees have access to the services provided by the Ombudsman and that  
603 the covered employees receive timely responses from the Ombudsman or his representatives to the  
604 inquiries.

605 9. Report annually on his activities to the standing committees of the General Assembly having  
606 jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of  
607 each year.

608 M. The plan established in accordance with this section shall not refuse to accept or make  
609 reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered  
610 employee.

611 For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage  
612 reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective

until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

R. The Department of Human Resource Management shall report annually, by November 30 of each year, on cost and utilization information for each of the mandated benefits set forth in subsection B, including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established pursuant to this section. The report shall be in the same detail and form as required of reports submitted pursuant to § 38.2-3419.1, with such additional information as is required to determine the financial impact, including the costs and benefits, of the particular mandated benefit.

**§ 2.2-2905. Certain officers and employees exempt from chapter.**

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;

674 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for  
675 such employees shall be subject to the review and approval of the Board of Visitors of the University of  
676 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia  
677 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the  
678 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

679 20. In executive branch agencies the employee who has accepted serving in the capacity of chief  
680 deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential  
681 assistant for policy or administration. An employee serving in either one of these two positions shall be  
682 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve  
683 in this exempt capacity;

684 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the  
685 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

686 22. Officers and employees of the Virginia Port Authority;

687 23. Employees of the Virginia College Savings Plan;

688 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental  
689 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to  
690 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure  
691 (§ 2.2-3000 et seq.);

692 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as  
693 state employees for purposes of participation in the Virginia Retirement System, health insurance, and  
694 all other employee benefits offered by the Commonwealth to its classified employees;

695 26. Employees of the Virginia Indigent Defense Commission; ~~and~~

696 27. Any chief of a campus police department that has been designated by the governing body of a  
697 public institution of higher education as exempt, pursuant to § 23-232; *and*

698 28. *The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage*  
699 *Control Authority.*

700 **§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative**  
701 **investigations.**

702 The following records are excluded from the provisions of this chapter but may be disclosed by the  
703 custodian in his discretion, except where such disclosure is prohibited by law:

704 1. Confidential records of all investigations of applications for licenses and permits, and of all  
705 licensees and permittees, made by or submitted to the *Virginia Alcoholic Beverage Control Board*  
706 *Authority*, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and  
707 Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et  
708 seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal  
709 Justice Services.

710 2. Records of active investigations being conducted by the Department of Health Professions or by  
711 any health regulatory board in the Commonwealth.

712 3. Investigator notes, and other correspondence and information, furnished in confidence with respect  
713 to an active investigation of individual employment discrimination complaints made to the Department  
714 of Human Resource Management, to such personnel of any local public body, including local school  
715 boards, as are responsible for conducting such investigations in confidence, or to any public institution  
716 of higher education. However, nothing in this section shall prohibit the disclosure of information taken  
717 from inactive reports in a form that does not reveal the identity of charging parties, persons supplying  
718 the information, or other individuals involved in the investigation.

719 4. Records of active investigations being conducted by the Department of Medical Assistance  
720 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

721 5. Investigative notes and other correspondence and information furnished in confidence with respect  
722 to an investigation or conciliation process involving an alleged unlawful discriminatory practice under  
723 the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance  
724 with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,  
725 1987, in accordance with applicable law, relating to local human rights or human relations commissions.  
726 However, nothing in this section shall prohibit the distribution of information taken from inactive reports  
727 in a form that does not reveal the identity of the parties involved or other persons supplying  
728 information.

729 6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery  
730 vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations  
731 that cause abuses in the administration and operation of the lottery and any evasions of such provisions,  
732 or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official  
733 records have not been publicly released, published or copyrighted. All studies and investigations referred  
734 to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study  
735 or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

11. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

13. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

**§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain**

**797 other limited exemptions.**

**798** The following records are excluded from the provisions of this chapter but may be disclosed by the  
**799** custodian in his discretion, except where such disclosure is prohibited by law:

**800** 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
**801** confidential records held pursuant to § 58.1-3.

**802** 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
**803** Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
**804** Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
**805** political subdivision of the Commonwealth; or the president or other chief executive officer of any  
**806** public institution of higher education in Virginia. However, no record, which is otherwise open to  
**807** inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to  
**808** or incorporated within any working paper or correspondence.

**809** As used in this subdivision:

**810** "Members of the General Assembly" means each member of the Senate of Virginia and the House of  
**811** Delegates and their legislative aides when working on behalf of such member.

**812** "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet  
**813** Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to  
**814** whom the Governor has delegated his authority pursuant to § 2.2-104.

**815** "Working papers" means those records prepared by or for an above-named public official for his  
**816** personal or deliberative use.

**817** 3. Library records that can be used to identify both (i) any library patron who has borrowed material  
**818** from a library and (ii) the material such patron borrowed.

**819** 4. Contract cost estimates prepared for the confidential use of the Department of Transportation in  
**820** awarding contracts for construction or the purchase of goods or services, and records and automated  
**821** systems prepared for the Department's Bid Analysis and Monitoring Program.

**822** 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,  
**823** whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by  
**824** the political subdivision.

**825** 6. Records and writings furnished by a member of the General Assembly to a meeting of a standing  
**826** committee, special committee or subcommittee of his house established solely for the purpose of  
**827** reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of  
**828** formulating advisory opinions to members on standards of conduct, or both.

**829** 7. Customer account information of a public utility affiliated with a political subdivision of the  
**830** Commonwealth, including the customer's name and service address, but excluding the amount of utility  
**831** service provided and the amount of money paid for such utility service.

**832** 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development  
**833** Authority concerning individuals who have applied for or received loans or other housing assistance or  
**834** who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by  
**835** the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the  
**836** waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and  
**837** housing authority created pursuant to § 36-4 concerning persons participating in or persons on the  
**838** waiting list for housing assistance programs funded by local governments or by any such authority; or  
**839** (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other  
**840** local government agency concerning persons who have applied for occupancy or who have occupied  
**841** affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's  
**842** own information shall not be denied.

**843** 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if  
**844** disclosure of them would have a detrimental effect upon the negotiating position of a governing body or  
**845** on the establishment of the terms, conditions and provisions of the siting agreement.

**846** 10. Records containing information on the site specific location of rare, threatened, endangered or  
**847** otherwise imperiled plant and animal species, natural communities, caves, and significant historic and  
**848** archaeological sites if, in the opinion of the public body that has the responsibility for such information,  
**849** disclosure of the information would jeopardize the continued existence or the integrity of the resource.  
**850** This exemption shall not apply to requests from the owner of the land upon which the resource is  
**851** located.

**852** 11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data  
**853** and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery  
**854** relating to matters of a specific lottery game design, development, production, operation, ticket price,  
**855** prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of  
**856** winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or  
**857** marketing, where such official records have not been publicly released, published, copyrighted or  
**858** patented. Whether released, published or copyrighted, all game-related information shall be subject to

public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of

920 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
921 employees or persons employed to perform an audit or examination of holder records.

922 21. Records of the Virginia Department of Emergency Management or a local governing body  
923 relating to citizen emergency response teams established pursuant to an ordinance of a local governing  
924 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
925 pager numbers, or operating schedule of an individual participant in the program.

926 22. Records of state or local park and recreation departments and local and regional park authorities  
927 to the extent such records contain information identifying a person under the age of 18 years. However,  
928 nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory  
929 information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C.  
930 § 1232g, unless the public body has undertaken the parental notification and opt-out requirements  
931 provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent,  
932 or guardian of such person, unless the parent's parental rights have been terminated or a court of  
933 competent jurisdiction has restricted or denied such access. For records of such persons who are  
934 emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated  
935 person who is the subject of the record may waive, in writing, the protections afforded by this  
936 subdivision. If the protections are so waived, the public body shall open such records for inspection and  
937 copying.

938 23. Records submitted for inclusion in the Statewide Alert Network administered by the Department  
939 of Emergency Management, to the extent that they reveal names, physical addresses, email addresses,  
940 computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable  
941 communications device information, or operating schedules of individuals or agencies, where the release  
942 of such information would compromise the security of the Statewide Alert Network or individuals  
943 participating in the Statewide Alert Network.

944 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

945 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement  
946 system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of  
947 the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

948 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings  
949 Plan on the pursuit of particular investment strategies, or the selection or termination of investment  
950 managers, prior to the execution of such investment strategies or the selection or termination of such  
951 managers, to the extent that disclosure of such records would have an adverse impact on the financial  
952 interest of the retirement system or the Virginia College Savings Plan; and

953 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a  
954 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of  
955 such records would have an adverse impact on the financial interest of the retirement system or the  
956 Virginia College Savings Plan.

957 For the records specified in subdivision b to be excluded from the provisions of this chapter, the  
958 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

959 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which  
960 protection from disclosure is sought;

961 (2) Identifying with specificity the data or other materials for which protection is sought; and

962 (3) Stating the reasons why protection is necessary.

963 The retirement system or the Virginia College Savings Plan shall determine whether the requested  
964 exclusion from disclosure meets the requirements set forth in subdivision b.

965 Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount  
966 of any investment held or the present value and performance of all asset classes and subclasses.

967 26. Records of the Department of Corrections made confidential by § 53.1-233.

968 27. Records maintained by the Department of the Treasury or participants in the Local Government  
969 Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be  
970 provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

971 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident  
972 Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers,  
973 except that access shall not be denied to the person who is the subject of the record.

974 29. Records maintained in connection with fundraising activities by the Veterans Services Foundation  
975 pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address,  
976 facsimile or telephone number, social security number or other identification number appearing on a  
977 driver's license, or credit card or bank account data of identifiable donors, except that access shall not be  
978 denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be  
979 construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the  
980 pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not  
981 apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the



foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. Records created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

34. *Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; (v) consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; or (vi) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.*

*In order for the records identified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:*

*a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*

*b. Identifying with specificity the data or other materials for which protection is sought; and*

*c. Stating the reasons why protection is necessary.*

*The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the proprietary information, trade secrets, or financial records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded it under this subdivision.*

#### **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

- 1043 4. The protection of the privacy of individuals in personal matters not related to public business.
- 1044 5. Discussion concerning a prospective business or industry or the expansion of an existing business
- 1045 or industry where no previous announcement has been made of the business' or industry's interest in
- 1046 locating or expanding its facilities in the community.
- 1047 6. Discussion or consideration of the investment of public funds where competition or bargaining is
- 1048 involved, where, if made public initially, the financial interest of the governmental unit would be
- 1049 adversely affected.
- 1050 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
- 1051 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
- 1052 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
- 1053 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
- 1054 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
- 1055 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
- 1056 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
- 1057 permit the closure of a meeting merely because an attorney representing the public body is in attendance
- 1058 or is consulted on a matter.
- 1059 8. In the case of boards of visitors of public institutions of higher education, discussion or
- 1060 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
- 1061 for services or work to be performed by such institution. However, the terms and conditions of any such
- 1062 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
- 1063 person and accepted by a public institution of higher education in Virginia shall be subject to public
- 1064 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
- 1065 (i) "foreign government" means any government other than the United States government or the
- 1066 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
- 1067 created under the laws of the United States or of any state thereof if a majority of the ownership of the
- 1068 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
- 1069 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
- 1070 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
- 1071 who is not a citizen or national of the United States or a trust territory or protectorate thereof.
- 1072 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
- 1073 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
- 1074 discussion or consideration of matters relating to specific gifts, bequests, and grants.
- 1075 10. Discussion or consideration of honorary degrees or special awards.
- 1076 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
- 1077 pursuant to subdivision 4 of § 2.2-3705.1.
- 1078 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
- 1079 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
- 1080 filed by the member, provided the member may request in writing that the committee meeting not be
- 1081 conducted in a closed meeting.
- 1082 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
- 1083 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
- 1084 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
- 1085 position of the governing body or the establishment of the terms, conditions and provisions of the siting
- 1086 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
- 1087 closed meeting.
- 1088 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
- 1089 activity and estimating general and nongeneral fund revenues.
- 1090 15. Discussion or consideration of medical and mental health records excluded from this chapter
- 1091 pursuant to subdivision 1 of § 2.2-3705.5.
- 1092 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
- 1093 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
- 1094 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
- 1095 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
- 1096 and subdivision 11 of § 2.2-3705.7.
- 1097 17. Those portions of meetings by local government crime commissions where the identity of, or
- 1098 information tending to identify, individuals providing information about crimes or criminal activities
- 1099 under a promise of anonymity is discussed or disclosed.
- 1100 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
- 1101 of, or information tending to identify, any prisoner who (i) provides information about crimes or
- 1102 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
- 1103 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
- 1104 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

1105 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff  
1106 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to  
1107 respond to such activity or a related threat to public safety; or discussion of reports or plans related to  
1108 the security of any governmental facility, building or structure, or the safety of persons using such  
1109 facility, building or structure.

1110 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or  
1111 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the  
1112 University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings  
1113 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or  
1114 other ownership interest in an entity, where such security or ownership interest is not traded on a  
1115 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential  
1116 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement  
1117 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia  
1118 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest  
1119 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of  
1120 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of  
1121 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be  
1122 construed to prevent the disclosure of information relating to the identity of any investment held, the  
1123 amount invested or the present value of such investment.

1124 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
1125 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which  
1126 individual child death cases are discussed by a regional or local child fatality review team established  
1127 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed  
1128 by family violence fatality review teams established pursuant to § 32.1-283.3.

1129 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
1130 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
1131 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
1132 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
1133 proprietary, business-related information pertaining to the operations of the University of Virginia  
1134 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
1135 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
1136 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
1137 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
1138 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
1139 Medical School, as the case may be.

1140 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or  
1141 consideration of any of the following: the acquisition or disposition of real or personal property where  
1142 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
1143 operational plans that could affect the value of such property, real or personal, owned or desirable for  
1144 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
1145 contracts for services or work to be performed by the Authority; marketing or operational strategies  
1146 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
1147 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications  
1148 or evaluations of other employees.

1149 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within  
1150 the Department of Health Professions to the extent such discussions identify any practitioner who may  
1151 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

1152 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
1153 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
1154 by or on behalf of individuals who have requested information about, applied for, or entered into  
1155 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)  
1156 of Title 23 is discussed.

1157 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created  
1158 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et  
1159 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless  
1160 E-911 service.

1161 27. Those portions of disciplinary proceedings by any regulatory board within the Department of  
1162 Professional and Occupational Regulation, Department of Health Professions, or the Board of  
1163 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach  
1164 a decision or meetings of health regulatory boards or conference committees of such boards to consider  
1165 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as

1166 requested by either of the parties.

1167 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of  
1168 § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are  
1169 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the  
1170 responsible public entity concerning such records.

1171 29. Discussion of the award of a public contract involving the expenditure of public funds, including  
1172 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
1173 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
1174 the public body.

1175 30. Discussion or consideration of grant or loan application records excluded from this chapter  
1176 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the  
1177 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment  
1178 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

1179 31. Discussion or consideration by the Commitment Review Committee of records excluded from  
1180 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as  
1181 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1182 32. [Expired.]

1183 33. Discussion or consideration of confidential proprietary records and trade secrets excluded from  
1184 this chapter pursuant to subdivision 18 of § 2.2-3705.6.

1185 34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless  
1186 Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets  
1187 excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

1188 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting  
1189 security matters made confidential pursuant to § 24.2-625.1.

1190 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee  
1191 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from  
1192 this chapter pursuant to subdivision A 2 a of § 2.2-3706.

1193 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards  
1194 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of  
1195 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship  
1196 award, review and consider scholarship applications and requests for scholarship award renewal, and  
1197 cancel, rescind, or recover scholarship awards.

1198 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter  
1199 pursuant to subdivision 1 of § 2.2-3705.6.

1200 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting  
1201 pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26,  
1202 by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College  
1203 Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment  
1204 Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant  
1205 to subdivision 25 of § 2.2-3705.7.

1206 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of  
1207 § 2.2-3705.6.

1208 41. Discussion or consideration by the Board of Education of records relating to the denial,  
1209 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of  
1210 § 2.2-3705.3.

1211 42. Those portions of meetings of the Virginia Military Advisory Council or any commission created  
1212 by executive order for the purpose of studying and making recommendations regarding preventing  
1213 closure or realignment of federal military and national security installations and facilities located in  
1214 Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization  
1215 appointed by a local governing body, during which there is discussion of records excluded from this  
1216 chapter pursuant to subdivision 12 of § 2.2-3705.2.

1217 43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of  
1218 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

1219 44. Discussion or consideration by the Virginia Tobacco Indemnification and Community  
1220 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of  
1221 § 2.2-3705.6.

1222 45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority  
1223 of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

1224 46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage  
1225 Control Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or  
1226 subdivision 34 of § 2.2-3705.7.

1227 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a

closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

**§ 2.2-3802. Systems to which chapter inapplicable.**

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the ~~Department of Virginia~~ Alcoholic Beverage Control Authority;
7. Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
8. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;
9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;
10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;
11. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);
12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;
13. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

14. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 63.2-1515.

**§ 2.2-4024. Hearing officers.**

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

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

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

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

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

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

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

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

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

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland

Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

**§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.**

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. The Department of Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

#### **§ 3.2-1010. Enforcement of chapter; summons.**

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

#### **§ 4.1-100. Definitions.**

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

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.



1474 "Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.  
 1475 "Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43  
 1476 ounces.  
 1477 "Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for  
 1478 recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33  
 1479 U.S.C. § 59ii.  
 1480 "Club" means any private nonprofit corporation or association which is the owner, lessee, or  
 1481 occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other  
 1482 like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also  
 1483 means the establishment so operated. A corporation or association shall not lose its status as a club  
 1484 because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.)  
 1485 of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided  
 1486 that no alcoholic beverages are served or consumed in the room where such charitable gaming is being  
 1487 conducted while such gaming is being conducted and that no alcoholic beverages are made available  
 1488 upon the premises to any person who is neither a member nor a bona fide guest of a member.  
 1489 Any such corporation or association which has been declared exempt from federal and state income  
 1490 taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a  
 1491 nonprofit corporation or association.  
 1492 "Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding  
 1493 alcoholic beverages.  
 1494 "Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains  
 1495 grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes,  
 1496 processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with  
 1497 the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility  
 1498 for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied  
 1499 the grapes, fruits, or other agricultural products used in the production of the wine. The contract  
 1500 winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have  
 1501 not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm  
 1502 winery for its services.  
 1503 "Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent  
 1504 structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items  
 1505 intended for human consumption consisting of a variety of such items of the types normally sold in  
 1506 grocery stores.  
 1507 "Day spa" means any commercial establishment that offers to the public both massage therapy,  
 1508 performed by persons certified in accordance with § 54.1-3029, and barbering or cosmetology services  
 1509 performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.  
 1510 "Designated area" means a room or area approved by the Board for on-premises licensees.  
 1511 "Dining area" means a public room or area in which meals are regularly served.  
 1512 "Establishment" means any place where alcoholic beverages of one or more varieties are lawfully  
 1513 manufactured, sold, or used.  
 1514 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing  
 1515 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the  
 1516 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol  
 1517 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing  
 1518 area or agreements for purchasing grapes or other fruits from agricultural growers within the  
 1519 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or  
 1520 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this  
 1521 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of  
 1522 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm  
 1523 winery, the term "farm" as used in this definition includes all of the land owned or leased by the  
 1524 individual members of the cooperative as long as such land is located in the Commonwealth.  
 1525 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty  
 1526 items relating to history, original and handmade arts and products, collectibles, crafts, and floral  
 1527 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure  
 1528 where stock is displayed and offered for sale and which has facilities to properly secure any stock of  
 1529 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered  
 1530 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall  
 1531 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be  
 1532 considered a gift shop.  
 1533 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may  
 1534 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such

persons facilities for manufacturing, fermenting and bottling such wine or beer.

"Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

"Government store" means a store established by the ~~Board~~ Authority for the sale of alcoholic beverages.

"Hotel" means any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to persons, and which has four or more bedrooms. It shall also mean the person who operates such hotel.

"Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this title.

"Internet wine retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

"Licensed" means the holding of a valid license issued *granted* by the ~~Board~~ Authority.

"Licensee" means any person to whom a license has been granted by the ~~Board~~ Authority.

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

*"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the stock of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such stock. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.*

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the ~~Board~~ *Authority* in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The ~~Board~~ *Authority* may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the ~~Department of Virginia~~ *Alcoholic Beverage Control Authority* whom the Board has designated as a law-enforcement officer pursuant to § 4.1-105.

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by

1658 such retail licensee.

1659 **§ 4.1-101. Virginia Alcoholic Beverage Control Authority created; public purpose.**

1660 A. *The General Assembly has determined that there exists in the Commonwealth a need to control*  
 1661 *the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the*  
 1662 *Commonwealth. Further, the General Assembly determines that the creation of an authority for this*  
 1663 *purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare,*  
 1664 *convenience, and prosperity of the people of the Commonwealth. To achieve this objective, there is*  
 1665 *hereby created an independent political subdivision of the Commonwealth, exclusive of the legislative,*  
 1666 *executive, or judicial branches of state government, to be known as the Virginia Alcoholic Beverage*  
 1667 *Control Authority. The Authority's exercise of powers and duties conferred by this title shall be deemed*  
 1668 *the performance of an essential governmental function and a matter of public necessity for which public*  
 1669 *moneys may be spent. The Authority is vested with control of the possession, sale, transportation,*  
 1670 *distribution, and delivery of alcoholic beverages in the Commonwealth, with plenary power to prescribe*  
 1671 *and enforce regulations and conditions under which alcoholic beverages are possessed, sold,*  
 1672 *transported, distributed, and delivered, so as to prevent any corrupt, incompetent, dishonest, or*  
 1673 *unprincipled practices and to promote the health, safety, welfare, convenience, and prosperity of the*  
 1674 *people of the Commonwealth. The exercise of the powers granted by this title shall be in all respects for*  
 1675 *the benefit of the citizens of the Commonwealth and for the promotion of their safety, health, welfare,*  
 1676 *and convenience. No part of the assets or net earnings of the Authority shall inure to the benefit of, or*  
 1677 *be distributable to, any private individual, except that reasonable compensation may be paid for services*  
 1678 *rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred*  
 1679 *that are in conformity with said purposes, and no private individual shall be entitled to share in the*  
 1680 *distribution of any of the corporate assets on dissolution of the Authority.*

1681 B. ~~The Department of Virginia Alcoholic Beverage Control is created and~~ Authority shall consist of  
 1682 the Virginia Alcoholic Beverage Control Board of Directors, the Chief Executive Officer, and the agents  
 1683 and employees of the ~~Board~~ Authority. The Virginia Alcoholic Beverage Control Authority shall be  
 1684 deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic  
 1685 Beverage Control Board.

1686 C. *Nothing contained in this title shall be construed as a restriction or limitation upon any powers*  
 1687 *that the Authority might otherwise have under any other law of the Commonwealth.*

1688 **§ 4.1-101.01. Board of Directors; membership; terms; compensation.**

1689 A. *The Board of Directors shall consist of three members. Members of the Board shall be elected by*  
 1690 *the joint vote of the two houses of the General Assembly, with the concurrence of the Governor, for*  
 1691 *regular staggered terms of six years. At the regular session of the General Assembly convened in each*  
 1692 *even-numbered year, one commissioner shall be elected for a regular six-year term.*

1693 *Whenever a vacancy in the Commission shall occur or exist when the General Assembly is in*  
 1694 *session, the General Assembly shall elect a successor for such unexpired term. If the General Assembly*  
 1695 *is not in session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy*  
 1696 *for a term ending 30 days after the commencement of the next regular session of the General Assembly,*  
 1697 *and the General Assembly shall elect a successor for such unexpired term.*

1698 *Notwithstanding any provision of law to the contrary, the General Assembly may remove any Board*  
 1699 *member from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty,*  
 1700 *absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in*  
 1701 *the Constitution or by the General Assembly. The General Assembly shall set forth in a written public*  
 1702 *statement the reasons for removing any Board member pursuant to this section at the time the removal*  
 1703 *occurs. The General Assembly shall be the sole judge of the sufficiency of the cause for removal as set*  
 1704 *forth in this section.*

1705 B. *Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three*  
 1706 *years next preceding his appointment, and his continued residency shall be a condition of his tenure in*  
 1707 *office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii)*  
 1708 *possess a minimum of seven years of demonstrated experience or expertise in the direct management,*  
 1709 *supervision, or control of a business or legal affairs. Appointees shall be subject to a background check*  
 1710 *in accordance with § 4.1-101.03.*

1711 C. *The Board shall elect annually from its membership a chairman and a vice-chairman and may*  
 1712 *also elect other subordinate officers, who need not be members of the Board. The Board may also form*  
 1713 *committees and advisory councils, which may include representatives who are not members of the*  
 1714 *Board, to undertake more extensive study and discussion of the issues before the Board. A majority of*  
 1715 *the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in*  
 1716 *the membership shall impair the right of a quorum to exercise the rights and perform all duties of the*  
 1717 *Authority.*

1718 D. *A majority of the Board shall constitute a quorum for the exercise of judicial, legislative, and*  
 1719 *discretionary functions of the Commission, whether there be a vacancy in the Commission or not, but a*

quorum shall not be necessary for the exercise of its administrative functions.

E. Members of the Board shall each annually receive such salary as shall be fixed from time to time in the appropriation act. Members of the Board shall devote their full time to the performance of their official duties and shall not be engaged in any other profession or occupation.

F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.

**§ 4.1-101.02. Appointment, salary, and powers of Chief Executive Officer.**

A. The Board shall appoint the Chief Executive Officer, who shall not be a member of the Board, and who shall hold, at a minimum, a baccalaureate degree in business or a related field of study and shall possess a minimum of 10 years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive a salary as determined by the Board, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § 4.1-101.03. The Chief Executive Officer shall (i) serve at the pleasure of the Board, (ii) carry out the powers and duties conferred upon him by the Board, and (iii) meet performance measures or targets set by the Board.

B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.

D. The Chief Executive Officer shall:

1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;

2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;

3. Appoint a chief financial officer and employ or retain such agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and

4. Make recommendations to the Board for legislative and regulatory changes.

E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

**§ 4.1-101.03. Background investigations of Board members and Chief Executive Officer.**

All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a national criminal history records search and to the Department of State Police for a Virginia criminal history records search. The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section. No person who has been convicted of a felony or of a crime involving moral turpitude shall be appointed to the Board or appointed by the Board.

**§ 4.1-101.04. Financial interests of Board, employees, and family members prohibited.**

No Board member or employee of the Authority and no spouse or immediate family member of any such member or employee shall have any financial interest, direct or indirect, in any licensee subject to the provisions of this title or in any entity that has submitted an application for a license under Chapter 2 (§ 4.1-200 et seq.). No Board member and no spouse or immediate family member of a Board member shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

**§ 4.1-101.05. General powers of Authority.**

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; and sell, transfer,

1781 or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any  
1782 time acquired or held by the Authority on such terms and conditions as may be determined by the  
1783 Board;

1784 4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the  
1785 sale of products of, or services rendered by the Authority at rates to be determined by the Authority for  
1786 the purpose of providing for the payment of the expenses of the Authority;

1787 5. Make and enter into all contracts and agreements necessary or incidental to the performance of  
1788 its duties, the furtherance of its purposes, and the execution of its powers under this title, including  
1789 agreements with any person or federal agency;

1790 6. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial  
1791 experts, investment bankers, superintendents, managers, and such other employees and agents as may be  
1792 necessary and fix their compensation to be payable from funds made available to the Authority. Legal  
1793 services for the Authority shall be provided by the Attorney General in accordance with Chapter 5  
1794 (§ 2.2-500 et seq.) of Title 2.2;

1795 7. Receive and accept from any federal or private agency, foundation, corporation, association, or  
1796 person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive  
1797 and accept from the Commonwealth or any state and any municipality, county, or other political  
1798 subdivision thereof or from any other source aid or contributions of either money, property, or other  
1799 things of value, to be held, used, and applied only for the purposes for which such grants and  
1800 contributions may be made. All federal moneys accepted under this section shall be accepted and  
1801 expended by the Authority upon such terms and conditions as are prescribed by the United States and  
1802 as are consistent with state law, and all state moneys accepted under this section shall be expended by  
1803 the Authority upon such terms and conditions as are prescribed by the Commonwealth;

1804 8. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business  
1805 shall be transacted and the manner in which the powers of the Authority shall be exercised and its  
1806 duties performed;

1807 9. Conduct or engage in any lawful business, activity, effort, or project consistent with the  
1808 Authority's purposes or necessary or convenient to exercise its powers;

1809 10. Develop policies and procedures generally applicable to the procurement of goods, services, and  
1810 construction, based upon competitive principles;

1811 11. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of  
1812 Title 2.2; and

1813 12. Do all acts and things necessary or convenient to carry out the powers granted to it by law and  
1814 perform any act or carry out any function not inconsistent with state law that may be useful in carrying  
1815 out the provisions of this title.

1816 **§ 4.1-101.06. Employees of the Authority.**

1817 A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the  
1818 Authority shall be eligible for membership in the Virginia Retirement System and participation in all  
1819 health and related insurance and other benefits, including premium conversion and flexible benefits,  
1820 available to state employees as provided by law. Employees of the Authority shall be employed on such  
1821 terms and conditions as established by the Board. The Board shall develop and adopt policies and  
1822 procedures that afford its employees grievance rights, ensure that employment decisions shall be based  
1823 upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion,  
1824 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or  
1825 disability.

1826 B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to  
1827 employees of the former Department of Alcoholic Beverage Control. The Authority shall issue a written  
1828 notice to all persons whose employment at the former Department of Alcoholic Beverage Control will be  
1829 transferred to the Authority. The date upon which such written notice is issued shall be referred to  
1830 herein as the "Option Date." Each person whose employment will be transferred to the Authority may,  
1831 by written request made within 180 days of the Option Date, elect not to become employed by the  
1832 Authority. Any employee of the former Department of Alcoholic Beverage Control who (i) elects not to  
1833 become employed by the Authority and who is not reemployed by any department, institution, board,  
1834 commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to  
1835 employment by the Authority; or (iii) is not offered a position with the Authority for which the employee  
1836 is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for  
1837 the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.).  
1838 Any employee who accepts employment with the Authority shall not be considered to be involuntarily  
1839 separated from state employment and shall not be eligible for the severance benefits conferred by the  
1840 provisions of the Workforce Transition Act.

1841 C. Notwithstanding any other provision of law to the contrary, any person whose employment is  
1842 transferred to the Authority as a result of this section and who is a member of any plan for providing

health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.

D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.

**§ 4.1-101.07. Moneys of Authority.**

All moneys of the Authority, from whatever source derived, shall be paid in accordance with § 4.1-116.

**§ 4.1-101.08. Forms of accounts and records; audit; annual report.**

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30.

**§ 4.1-101.09. Leases of property.**

The Authority shall be exempt from the provisions of § 2.2-1149 and from any rules, regulations, and guidelines of the Division of Engineering and Buildings in relation to leases of real property into which it enters.

**§ 4.1-101.010. Exemptions from taxes or assessments.**

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.

**§ 4.1-101.011. Exemption of Authority from personnel and procurement procedures; information systems.**

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 apply to the Authority in the exercise of any power conferred under this title.

**§ 4.1-101.012. Reversion to the Commonwealth.**

In the event of the dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Commonwealth.

**§ 4.1-103. General powers of Board.**

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

6. Lease, occupy and improve any land or building required for the purposes of this title;

7. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed

1904 thereon;

1905 10. Appoint every agent and employee required for its operations; require any or all of them to give  
 1906 bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the  
 1907 services of experts and professionals;

1908 11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the  
 1909 production of records, memoranda, papers and other documents before the Board or any agent of the  
 1910 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board  
 1911 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take  
 1912 testimony thereunder, and make summary decisions, subject to final decision by the Board, on  
 1913 application of any party aggrieved;

1914 12. Make a reasonable charge for preparing and furnishing statistical information and compilations to  
 1915 persons other than (i) officials, including court and police officials, of the Commonwealth and of its  
 1916 subdivisions if the information requested is for official use and (ii) persons who have a personal or legal  
 1917 interest in obtaining the information requested if such information is not to be used for commercial or  
 1918 trade purposes;

1919 13. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)  
 1920 and § 4.1-111 of this chapter;

1921 14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and  
 1922 sale of alcoholic beverages;

1923 15. Assess and collect civil penalties and civil charges for violations of this title and Board  
 1924 regulations;

1925 16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

1926 17. Establish minimum food sale requirements for all retail licensees; and

1927 18. *Require affirmations from a producer of distilled spirits that spirits sold to the Board are not*  
 1928 *sold at a cost higher than the lowest price at which the item was sold by such producer anywhere in*  
 1929 *any other state or in the District of Columbia or to any state or state agency that owns and operates a*  
 1930 *retail liquor store. The Board may require a producer of distilled spirits products to file an affirmation*  
 1931 *statement on a form prescribed by the Board verifying the bottle and case price as well as any*  
 1932 *discounts then in effect;*

1933 19. *Review and approve any proposed legislative or regulatory changes suggested by the Chief*  
 1934 *Executive Officer as the Board deems appropriate; and*

1935 ~~18.~~ 20. Do all acts necessary or advisable to carry out the purposes of this title.

1936 **§ 4.1-103.1. Criminal history records check required on certain employees; reimbursement of**  
 1937 **costs.**

1938 ~~On or after July 1, 1994, all~~ All persons hired by the Board Authority whose job duties involve  
 1939 access to or handling of departmental funds or merchandise shall be subject to a criminal history records  
 1940 check before, and as a condition of, employment.

1941 *No person who has been convicted of a felony or a crime involving moral turpitude shall be*  
 1942 *employed or appointed by the Authority.*

1943 The Department of State Police shall be reimbursed by the Board Authority for the cost of  
 1944 investigations conducted pursuant to this section.

1945 **§ 4.1-119. Operation of government stores.**

1946 A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and  
 1947 operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by  
 1948 farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any  
 1949 garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the  
 1950 Board from time to time, in such counties, cities, and towns considered advisable by the Board. The  
 1951 Board may discontinue any such store.

1952 B. With respect to the sale of wine produced by farm wineries, the Board may give preference to  
 1953 farm wineries that produce 2,500 cases or less of wine per year.

1954 C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and  
 1955 brands of alcoholic beverages and other Board-approved products that are sold in government stores.  
 1956 Differences in the cost of operating stores, and market competition and conditions may be reflected in  
 1957 the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages  
 1958 to federal instrumentalities (i) authorized and operating under the laws of the United States and  
 1959 regulations of the United States Department of Defense and (ii) located within the boundaries of federal  
 1960 enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be  
 1961 greater or less than the wholesale price charged other authorized purchasers. *Nothing in this subsection*  
 1962 *shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold*  
 1963 *at government stores, which retail price may include promotional, volume, or other discounts deemed*  
 1964 *appropriate by the Board.*

1965 D. Alcoholic beverages at government stores shall be sold by employees of the Board Authority who



shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises, provided:

1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are grown on the licensee's farm or land in Virginia leased by the licensee and no more than 25 percent of the agricultural products are grown or produced outside the Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a lesser percentage of products grown on the licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the availability of agricultural products grown on the farm to manufacture the spirits during a given license year;

2. Such licensee is a duly organized nonprofit association holding title to real property, together with improvements thereon that are significant in American history, under a charter from the Commonwealth to preserve such property, and which association accepts no federal, state, or local funds;

3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site;

4. Such licensee is an independently certified organic distillery, with such certification by a USDA-accredited certification agency;

5. Such licensee is employing traditional distilling techniques, including the use of copper or stainless steel pot stills to blend or produce spirits in any county with a population of less than 20,000; or

6. Such licensee is employing traditional techniques, including the maceration of natural fruits, nuts, grains, beans, and spices in neutral grain spirits to extract natural flavors used to produce or blend liqueurs and spirits.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the ~~Board Authority~~ and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § 4.1-304. The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H. With respect to purchases by licensees at government stores, the ~~Board Authority~~ shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the ~~Board Authority~~, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the ~~Board Authority~~ shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

*J. Before the Authority implements any increase in the markup on distilled spirits or any change to the markup formula for distilled spirits pursuant to § 4.1-325 that would result in an increase in the retail price of distilled spirits sold to the public, the Authority shall (i) provide at least 45 days' public notice before such a price increase takes effect; (ii) provide the opportunity for submission of written comments regarding the proposed price increase; (iii) conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and (iv) consider any written or*

2027 *verbal comments before implementing such a price increase.*

2028 **§ 4.1-121. Referendum on establishment of government stores.**

2029 A. The qualified voters of any county, city, or town having a population of 1,000 or more may file a  
 2030 petition with the circuit court of the county or city, or of the county wherein the town or the greater  
 2031 part thereof is situated, asking that a referendum be held on the question of whether the sale by the  
 2032 ~~Board of Virginia Alcoholic Beverages~~ *Beverage Control Authority*, other than beer and wine not  
 2033 produced by farm wineries, should be permitted within that jurisdiction. The petition shall be signed by  
 2034 qualified voters equal in number to at least ~~ten~~ 10 percent of the number registered in the jurisdiction on  
 2035 January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the filing of  
 2036 a petition, the court shall order the election officials of the county, city, or town, on the date fixed in  
 2037 the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of  
 2038 the referendum in a newspaper of general circulation in the county, city, or town once a week for three  
 2039 consecutive weeks prior to the referendum.

2040 The question on the ballot shall be:

2041 "Shall the sale by the *Virginia Alcoholic Beverage Control Board Authority* of alcoholic beverages,  
 2042 other than beer and wine not produced by farm wineries, be permitted in ..... (name of county,  
 2043 city, or town)?"

2044 The referendum shall be ordered and held and the results certified as provided in § 24.2-684.  
 2045 Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to  
 2046 the Board and to the governing body of the county, city, or town.

2047 B. Once a referendum has been held, no other referendum on the same question shall be held in the  
 2048 county, city, or town within four years of the date of the prior referendum. However, a town shall not  
 2049 be prescribed from holding a referendum within such period although an election has been held in the  
 2050 county in which the town or a part thereof is located less than four years prior thereto.

2051 **§ 4.1-124. Referendum on the sale of mixed beverages.**

2052 A. The provisions of this title relating to the sale of mixed beverages shall not become effective in  
 2053 any town, county, or supervisor's election district of a county until a majority of the voters voting in a  
 2054 referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by  
 2055 restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election  
 2056 district of a county may file a petition with the circuit court of the county asking that a referendum be  
 2057 held on the question of whether the sale of mixed beverages by restaurants licensed by the Board should  
 2058 be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to  
 2059 at least 10 percent of the number registered in the town, county, or supervisor's election district on  
 2060 January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

2061 Petition requirements for any county shall be based on the number of registered voters in the county,  
 2062 including the number of registered voters in any town having a population in excess of 1,000 located  
 2063 within such county. Upon the filing of a petition, and under no other circumstances, the court shall order  
 2064 the election officials of the county to conduct a referendum on the question.

2065 The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of  
 2066 general circulation in the town, county, or supervisor's election district once a week for three consecutive  
 2067 weeks prior to the referendum.

2068 The question on the ballot shall be:

2069 "Shall the sale of mixed alcoholic beverages by restaurants licensed by the *Virginia Alcoholic*  
 2070 *Beverage Control Board Authority* be permitted in ..... (name of town, county, or supervisor's election  
 2071 district of county)?"

2072 The referendum shall be ordered and held and the results certified as provided in Article 5  
 2073 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. Thereupon the court shall enter of record an order  
 2074 certified by the clerk of the court to be transmitted to the Board and to the governing body of the town  
 2075 or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title  
 2076 be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of  
 2077 a county on or after 30 days following the entry of the order if a majority of the voters voting in the  
 2078 referendum have voted "Yes."

2079 The provisions of this section shall be applicable to towns having a population in excess of 1,000 to  
 2080 the same extent and subject to the same conditions and limitations as are otherwise applicable to  
 2081 counties under this section. Such towns shall be treated as separate local option units, and only residents  
 2082 of any such town shall be eligible to vote in any referendum held pursuant to this section for any such  
 2083 town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote  
 2084 in any referendum held pursuant to this section for any county in which the town is located.

2085 The provisions of this section shall not require any town created as a result of a city-to-town  
 2086 reversion pursuant to Chapter 41 (§ 15.2-4100 et seq.) of Title 15.2 to hold a referendum on the same  
 2087 question if a majority of the voters voting in the former city had previously approved the sale of mixed  
 2088 beverages by restaurants licensed by the Board in such city.

B. Once a referendum has been held, no other referendum on the same question shall be held in the town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § 4.1-122, the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § 4.1-210. However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

**§ 4.1-128. Local ordinances or resolutions regulating or taxing alcoholic beverages.**

A. No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the ~~Alcoholic Beverage Control~~ Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by §§ § 58.1-605, 58.1-3833 or §-58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

**§ 4.1-209.1. Direct shipment of wine and beer; shipper's license.**

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section. Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such

2150 brands that an application has been filed for a shipper's license. The notice shall be in writing and in a  
2151 form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary  
2152 to implement the provisions of this section, including regulations that permit the holder of a shipper's  
2153 license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or  
2154 beer identified in such shipper's license.

2155 B. Any applicant for a wine or beer shipper's license that does not own or have the right to control  
2156 the distribution of the brands of wine, farm wine, or beer identified in such person's application may be  
2157 issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its  
2158 application for a shipper's license, and with any subsequent application for renewal thereof, the written  
2159 consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are  
2160 identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by  
2161 the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor,  
2162 that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its  
2163 brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from  
2164 withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery,  
2165 or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to  
2166 withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such  
2167 shipper licensee shall promptly file with the Board an amendment to its license eliminating any such  
2168 withdrawn brand or brands from the shipper's license.

2169 C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall  
2170 be by approved common carrier only. The Board shall develop regulations pursuant to which common  
2171 carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by  
2172 holders of licenses issued pursuant to this section. Such regulations shall include provisions that require  
2173 (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to  
2174 sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and  
2175 (iii) the Board-approved common carrier to submit to the Board such information as the Board may  
2176 prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears  
2177 to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or  
2178 beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of  
2179 each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location  
2180 stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR  
2181 OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common  
2182 carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee  
2183 shall be liable only for their independent acts.

2184 D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each  
2185 shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in  
2186 Virginia. The licensee shall collect the taxes due to the Commonwealth and remit any excise taxes  
2187 monthly to the ~~Department of Virginia~~ *Department of Virginia Alcoholic Beverage Control Authority* and any sales taxes to the  
2188 Department of Taxation.

2189 E. Notwithstanding the provisions of § 4.1-203, the holder of a wine shipper license or beer shipper  
2190 license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month  
2191 club at in-state or out-of-state locations for which a license for on-premises consumption has been  
2192 issued, other than the place where the licensee carries on the business for which the license is granted.  
2193 For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an  
2194 agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license  
2195 and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell  
2196 and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month  
2197 for an agreed term of months.

2198 F. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may ship wine or  
2199 beer as authorized by this section through the use of the services of an approved fulfillment warehouse.  
2200 For the purposes of this section, a "fulfillment warehouse" means a business operating a warehouse and  
2201 providing storage, packaging, and shipping services to wineries or breweries. The Board shall develop  
2202 regulations pursuant to which fulfillment warehouses may apply for approval to provide storage,  
2203 packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations  
2204 shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately  
2205 licensed for the services to be provided by the state in which its place of business is located, (ii) the  
2206 Board-approved fulfillment warehouse to maintain such records and to submit to the Board such  
2207 information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer  
2208 shipper licensed under this section to whom services are provided to enter into a contract designating the  
2209 fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this  
2210 section.

2211 G. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may sell wine or

beer as authorized by this section through the use of the services of an approved marketing portal. For the purposes of this section, a "marketing portal" means a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine or beer and accepting and processing payment of such orders as the agent of a licensed wine or beer shipper. The Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section.

**§ 4.1-212.1. Permits; delivery of wine and beer; regulations of Board.**

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal consumption.

B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal consumption.

C. All such deliveries shall be to consumers within the Commonwealth for personal consumption only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the permittee. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold; except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Department of Virginia Alcoholic Beverage Control Authority and any sales taxes to the Department of Taxation.

**§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to *subdivision B 11 of § 4.1-111 B 11*;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;
9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages

2273 offered for sale;

2274 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or  
2275 obliterated;

2276 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the  
2277 licensed premises;

2278 12. Allow any striptease act on the licensed premises;

2279 13. Allow persons connected with the licensed business to appear nude or partially nude;

2280 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty  
2281 and in a position that is involved in the selling or serving of alcoholic beverages to customers.

2282 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
2283 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
2284 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
2285 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
2286 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of  
2287 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for  
2288 quality control purposes;

2289 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license  
2290 whether the closure is broken or unbroken except in accordance with § 4.1-210.

2291 The provisions of this subdivision shall not apply to the delivery of:

2292 a. "Soju." For the purposes of this ~~clause~~ subdivision, "soju" means a traditional Korean alcoholic  
2293 beverage distilled from rice, barley or sweet potatoes; or

2294 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content  
2295 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and  
2296 perishable;

2297 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

2298 17. Conceal any sale or consumption of any alcoholic beverages;

2299 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or  
2300 obstruct special agents of the Board in the discharge of their duties;

2301 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any  
2302 such alcoholic beverages from the premises;

2303 20. Knowingly employ in the licensed business any person who has the general reputation as a  
2304 prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person  
2305 who drinks to excess or engages in illegal gambling;

2306 21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device,  
2307 machine or apparatus;

2308 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a  
2309 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the  
2310 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or  
2311 conduct on any conference, convention, trade show or event held or to be held on the premises of the  
2312 licensee, when such gift is made in the course of usual and customary business entertainment and is in  
2313 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection  
2314 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision  
2315 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall  
2316 keep complete and accurate records of gifts given in accordance with this subdivision; or

2317 23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or  
2318 device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase  
2319 the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the  
2320 normal or customary price charged for the same alcoholic beverage.

2321 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

2322 C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters,  
2323 concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or  
2324 theatrical performances, when the performances that are presented are expressing matters of serious  
2325 literary, artistic, scientific, or political value.

2326 **§ 9.1-101. Definitions.**

2327 As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires  
2328 a different meaning:

2329 "Administration of criminal justice" means performance of any activity directly involving the  
2330 detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication,  
2331 correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection,  
2332 storage, and dissemination of criminal history record information.

2333 "Board" means the Criminal Justice Services Board.

2334 "Conviction data" means information in the custody of any criminal justice agency relating to a

judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632; or (ix) campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

#### **§ 9.1-102. Powers and duties of the Board and the Department.**

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the

2396 administration of this chapter including the authority to require the submission of reports and  
2397 information by law-enforcement officers within the Commonwealth. Any proposed regulations  
2398 concerning the privacy, confidentiality, and security of criminal justice information shall be submitted  
2399 for review and comment to any board, commission, or committee or other body which may be  
2400 established by the General Assembly to regulate the privacy, confidentiality, and security of information  
2401 collected and maintained by the Commonwealth or any political subdivision thereof;

2402 2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement  
2403 officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time  
2404 required for completion of such training;

2405 3. Establish minimum training standards and qualifications for certification and recertification for  
2406 law-enforcement officers serving as field training officers;

2407 4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and  
2408 programs for schools, whether located in or outside the Commonwealth, which are operated for the  
2409 specific purpose of training law-enforcement officers;

2410 5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize  
2411 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in  
2412 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum  
2413 qualifications for certification and recertification of instructors who provide such training;

2414 6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating  
2415 to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be  
2416 completed by law-enforcement officers who have not completed the compulsory training standards set  
2417 out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure  
2418 to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly  
2419 admissible testimony or other evidence from such officer resulting from any undercover investigation;

2420 7. Establish compulsory minimum entry-level, in-service and advanced training standards for those  
2421 persons designated to provide courthouse and courtroom security pursuant to the provisions of  
2422 § 53.1-120, and to establish the time required for completion of such training;

2423 8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy  
2424 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time  
2425 required for the completion of such training;

2426 9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as  
2427 the time required for completion of such training, for persons employed as deputy sheriffs and jail  
2428 officers by local criminal justice agencies, correctional officers employed by the Department of  
2429 Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile  
2430 correctional facility as the term is defined in § 66-25.3;

2431 10. Establish compulsory minimum training standards for all dispatchers employed by or in any local  
2432 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such  
2433 training standards shall apply only to dispatchers hired on or after July 1, 1988;

2434 11. Establish compulsory minimum training standards for all auxiliary police officers employed by or  
2435 in any local or state government agency. Such training shall be graduated and based on the type of  
2436 duties to be performed by the auxiliary police officers. Such training standards shall not apply to  
2437 auxiliary police officers exempt pursuant to § 15.2-1731;

2438 12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state  
2439 and federal governmental agencies, and with universities, colleges, community colleges, and other  
2440 institutions, whether located in or outside the Commonwealth, concerning the development of police  
2441 training schools and programs or courses of instruction;

2442 13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,  
2443 for school operation for the specific purpose of training law-enforcement officers; but this shall not  
2444 prevent the holding of any such school whether approved or not;

2445 14. Establish and maintain police training programs through such agencies and institutions as the  
2446 Board deems appropriate;

2447 15. Establish compulsory minimum qualifications of certification and recertification for instructors in  
2448 criminal justice training schools approved by the Department;

2449 16. Conduct and stimulate research by public and private agencies which shall be designed to  
2450 improve police administration and law enforcement;

2451 17. Make recommendations concerning any matter within its purview pursuant to this chapter;

2452 18. Coordinate its activities with those of any interstate system for the exchange of criminal history  
2453 record information, nominate one or more of its members to serve upon the council or committee of any  
2454 such system, and participate when and as deemed appropriate in any such system's activities and  
2455 programs;

2456 19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this  
2457 chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to



submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

20. Conduct audits as required by § 9.1-131;

21. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

22. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

23. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

2519 35. Adopt and administer reasonable regulations for the planning and implementation of programs  
2520 and activities and for the allocation, expenditure and subgranting of funds available to the  
2521 Commonwealth and to units of general local government, and for carrying out the purposes of this  
2522 chapter and the powers and duties set forth herein;

2523 36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

2524 37. Establish training standards and publish a model policy for law-enforcement personnel in the  
2525 handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for  
2526 determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall  
2527 provide technical support and assistance to law-enforcement agencies in carrying out the requirements  
2528 set forth in § 9.1-1301 and shall by December 1, 2009, submit a report on the status of implementation  
2529 of these requirements to the chairmen of the House and Senate Courts of Justice Committees;

2530 38. Establish training standards and publish a model policy for law-enforcement personnel in  
2531 communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

2532 39. Establish compulsory training standards for basic training and the recertification of  
2533 law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for  
2534 biased policing;

2535 40. Review and evaluate community-policing programs in the Commonwealth, and recommend where  
2536 necessary statewide operating procedures, guidelines, and standards which strengthen and improve such  
2537 programs, including sensitivity to and awareness of cultural diversity and the potential for biased  
2538 policing;

2539 41. Publish and disseminate a model policy or guideline that may be used by state and local agencies  
2540 to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the  
2541 potential for biased policing;

2542 42. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with  
2543 Virginia law-enforcement agencies, provide technical assistance and administrative support, including  
2544 staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center  
2545 may provide accreditation assistance and training, resource material, and research into methods and  
2546 procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia  
2547 accreditation status;

2548 43. Promote community policing philosophy and practice throughout the Commonwealth by  
2549 providing community policing training and technical assistance statewide to all law-enforcement  
2550 agencies, community groups, public and private organizations and citizens; developing and distributing  
2551 innovative policing curricula and training tools on general community policing philosophy and practice  
2552 and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia  
2553 organizations with specific community policing needs; facilitating continued development and  
2554 implementation of community policing programs statewide through discussion forums for community  
2555 policing leaders, development of law-enforcement instructors; promoting a statewide community policing  
2556 initiative; and serving as a statewide information source on the subject of community policing including,  
2557 but not limited to periodic newsletters, a website and an accessible lending library;

2558 44. Establish, in consultation with the Department of Education and the Virginia State Crime  
2559 Commission, compulsory minimum standards for employment and job-entry and in-service training  
2560 curricula and certification requirements for school security officers, which training and certification shall  
2561 be administered by the Virginia Center for School and Campus Safety pursuant to § 9.1-184. Such  
2562 training standards shall include, but shall not be limited to, the role and responsibility of school security  
2563 officers, relevant state and federal laws, school and personal liability issues, security awareness in the  
2564 school environment, mediation and conflict resolution, disaster and emergency response, and student  
2565 behavioral dynamics. The Department shall establish an advisory committee consisting of local school  
2566 board representatives, principals, superintendents, and school security personnel to assist in the  
2567 development of these standards and certification requirements;

2568 45. Establish training standards and publish a model policy and protocols for local and regional  
2569 sexual assault response teams;

2570 46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with  
2571 Article 11 (§ 9.1-185 et seq.);

2572 47. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

2573 48. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal  
2574 justice agencies regarding the investigation, registration, and dissemination of information requirements  
2575 as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

2576 49. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula,  
2577 and (iii) certification requirements for campus security officers. Such training standards shall include, but  
2578 not be limited to, the role and responsibility of campus security officers, relevant state and federal laws,  
2579 school and personal liability issues, security awareness in the campus environment, and disaster and  
2580 emergency response. The Department shall provide technical support and assistance to campus police

departments and campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

50. Establish compulsory training standards and publish a model policy for law-enforcement personnel regarding death notification;

51. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established pursuant to § 9.1-187;

52. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the Virginia Alcoholic Beverage Control Board Authority;

53. Establish training standards and publish a model policy for law-enforcement personnel assigned to vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

54. Establish training standards and publish a model policy for law-enforcement personnel involved in criminal investigations that embody current best practices for conducting photographic and live lineups;

55. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia. The Department shall publish and disseminate a model policy or guideline for law-enforcement personnel involved in criminal investigations or assigned to vehicle or street patrol duties to ensure that law-enforcement personnel are sensitive to and aware of human trafficking offenses and the identification of victims of human trafficking offenses;

56. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of § 46.2-117; and

57. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

**§ 9.1-400. Title of chapter; definitions.**

A. This chapter shall be known and designated as the Line of Duty Act.

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

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board Authority; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later

declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

#### **§ 9.1-500. Definitions.**

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

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Virginia Alcoholic Beverage Control Authority, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Virginia Alcoholic Beverage Control Authority, the Department of Motor Vehicles, or the Department of Conservation and Recreation;

b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ten or more law-enforcement officers; or

c. Any conservation police officer as defined in § 9.1-101.

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

#### **§ 9.1-801. Public safety officer defined.**

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a correctional officer employed at a juvenile correctional facility as the term is defined in § 66-25.3; a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or rescue squad that has been recognized by an ordinance or resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia Defense Force while such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board Authority; any police agent appointed under the provisions of § 56-353; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to § 29.1-200; any commissioned forest warden appointed pursuant to § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power to arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; any investigator who is a full-time sworn member of the security division of the Virginia Lottery; any full-time sworn member of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications, when fulfilling duties pursuant to § 46.2-217; any campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23; and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

#### **§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.**

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and

whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;

3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*;

4. The sale and shipment of wine to the *Virginia Alcoholic Beverage Control Board Authority*, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*, and federal law;

5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*, and federal law; or

6. The sale of wine-related items that are incidental to the sale of wine.

**§ 15.2-2288.3:1. Limited brewery license; local regulation of certain activities.**

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § 4.1-208 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § 4.1-208:

1. The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer;

2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery;

3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*;

4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law;

5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law; or

6. The sale of beer-related items that are incidental to the sale of beer.

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

**§ 18.2-57. Assault and battery; penalty.**

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is

2765 committed because of his race, religious conviction, color or national origin, the penalty upon conviction  
2766 shall include a term of confinement of at least six months, 30 days of which shall be a mandatory  
2767 minimum term of confinement.

2768 B. However, if a person intentionally selects the person against whom an assault and battery resulting  
2769 in bodily injury is committed because of his race, religious conviction, color or national origin, the  
2770 person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of  
2771 confinement of at least six months, 30 days of which shall be a mandatory minimum term of  
2772 confinement.

2773 C. In addition, if any person commits an assault or an assault and battery against another knowing or  
2774 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as  
2775 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the  
2776 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an  
2777 employee of a local or regional correctional facility directly involved in the care, treatment, or  
2778 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or  
2779 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,  
2780 an employee or other individual who provides control, care, or treatment of sexually violent predators  
2781 committed to the custody of the Department of Behavioral Health and Developmental Services, a  
2782 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services  
2783 personnel member who is employed by or is a volunteer of an emergency medical services agency or as  
2784 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,  
2785 regardless of whether a resolution has been adopted by the governing body of a political subdivision  
2786 recognizing such firefighters or emergency medical services personnel as employees, engaged in the  
2787 performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the  
2788 sentence of such person shall include a mandatory minimum term of confinement of six months.

2789 Nothing in this subsection shall be construed to affect the right of any person charged with a  
2790 violation of this section from asserting and presenting evidence in support of any defenses to the charge  
2791 that may be available under common law.

2792 D. In addition, if any person commits a battery against another knowing or having reason to know  
2793 that such other person is a full-time or part-time employee of any public or private elementary or  
2794 secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1  
2795 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in  
2796 jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is  
2797 committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1,  
2798 the person shall serve a mandatory minimum sentence of confinement of six months.

2799 E. In addition, any person who commits a battery against another knowing or having reason to know  
2800 that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the  
2801 performance of his duties as an emergency health care provider in an emergency room of a hospital or  
2802 clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1  
2803 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15  
2804 days in jail, two days of which shall be a mandatory minimum term of confinement.

2805 F. As used in this section:

2806 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge  
2807 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore  
2808 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'  
2809 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute  
2810 judge of such district court.

2811 "Law-enforcement officer" means any full-time or part-time employee of a police department or  
2812 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof  
2813 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or  
2814 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and  
2815 Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Virginia  
2816 Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, and  
2817 full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed  
2818 pursuant to § 46.2-217, and such officer also includes jail officers in local and regional correctional  
2819 facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail  
2820 responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and  
2821 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the  
2822 Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant  
2823 to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

2824 "School security officer" means an individual who is employed by the local school board for the  
2825 purpose of maintaining order and discipline, preventing crime, investigating violations of school board  
2826 policies and detaining persons violating the law or school board policies on school property, a school

bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

#### **§ 18.2-246.6. Definitions.**

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § 58.1-1011 or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § 58.1-1000, shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

#### **§ 18.2-308. Carrying concealed weapons; exceptions; penalty.**

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § 18.2-308.012, this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the

2888 Commonwealth;

2889 3. Any person who is at, or going to or from, an established shooting range, provided that the  
2890 weapons are unloaded and securely wrapped while being transported;

2891 4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or  
2892 from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped  
2893 while being transported;

2894 5. Any person carrying such weapons between his place of abode and a place of purchase or repair,  
2895 provided the weapons are unloaded and securely wrapped while being transported;

2896 6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland  
2897 Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from  
2898 those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be  
2899 construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

2900 7. Any State Police officer retired from the Department of State Police, any officer retired from the  
2901 Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control  
2902 officer retired from a police department or sheriff's office within the Commonwealth, any special agent  
2903 retired from the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board*  
2904 *Authority*, any conservation police officer retired from the Department of Game and Inland Fisheries,  
2905 any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine  
2906 Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of  
2907 Title 23 retired from a campus police department, any retired member of the enforcement division of the  
2908 Department of Motor Vehicles appointed pursuant to § 46.2-217, and any retired investigator of the  
2909 security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a  
2910 service-related disability; (ii) following at least 15 years of service with any such law-enforcement  
2911 agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on  
2912 long-term leave from such law-enforcement agency or board due to a service-related injury, provided  
2913 such officer carries with him written proof of consultation with and favorable review of the need to  
2914 carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from  
2915 which the officer retired or the agency that employs the officer or, in the case of special agents, issued  
2916 by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A  
2917 copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to  
2918 the Department of State Police for entry into the Virginia Criminal Information Network. The chief  
2919 law-enforcement officer shall not without cause withhold such written proof if the retired  
2920 law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause  
2921 (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof  
2922 of consultation upon return to work or upon termination of employment with the law-enforcement  
2923 agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the  
2924 Virginia Criminal Information Network. However, if such officer retires on disability because of the  
2925 service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a  
2926 concealed handgun, he may retain the previously issued written proof of consultation. A retired  
2927 law-enforcement officer who receives proof of consultation and favorable review pursuant to this  
2928 subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer  
2929 authorized to carry a concealed handgun pursuant to subdivision 2;

2930 7a. Any person who is eligible for retirement with at least 20 years of service with a  
2931 law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from  
2932 such law-enforcement agency or board to accept a position covered by a retirement system that is  
2933 authorized under Title 51.1, provided such person carries with him written proof of consultation with  
2934 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement  
2935 officer of the agency from which he resigned or, in the case of special agents, issued by the State  
2936 Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the  
2937 proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the  
2938 Department of State Police for entry into the Virginia Criminal Information Network. The chief  
2939 law-enforcement officer shall not without cause withhold such written proof if the law-enforcement  
2940 officer otherwise meets the requirements of this section.

2941 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the  
2942 privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the  
2943 proof of consultation and favorable review required, shall be deemed to have been issued a concealed  
2944 handgun permit.

2945 For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired  
2946 or resigned law-enforcement officer who receives proof of consultation and review pursuant to  
2947 subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or  
2948 resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is  
2949 required of active law-enforcement officers in the Commonwealth. If such retired or resigned



law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States, national guard, or naval militia, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and

5. Harbormaster of the City of Hopewell.

#### **§ 18.2-308.03. Fees for concealed handgun permits.**

A. The clerk shall charge a fee of \$10 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed \$35 to cover the cost of conducting an investigation pursuant to this article. The \$35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant. The State Police may charge a fee not to exceed \$5 to cover its costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed \$50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application.

B. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the *Virginia* Alcoholic Beverage Control ~~Board~~ Authority or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi)

3011 as a designated boarding team member or boarding officer of the United States Coast Guard, after  
3012 completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in  
3013 § 53.1-1 after completing 15 years of service.

3014 **§ 18.2-308.012. Prohibited conduct.**

3015 A. Any person permitted to carry a concealed handgun who is under the influence of alcohol or  
3016 illegal drugs while carrying such handgun in a public place is guilty of a Class 1 misdemeanor.  
3017 Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the  
3018 person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1,  
3019 maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public  
3020 intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon  
3021 such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify  
3022 the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply  
3023 for a concealed handgun permit for a period of five years.

3024 B. No person who carries a concealed handgun onto the premises of any restaurant or club as  
3025 defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises  
3026 consumption has been granted by the Virginia Alcoholic Beverage Control Board Authority under Title  
3027 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed  
3028 handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a  
3029 Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local  
3030 law-enforcement officer.

3031 **§ 18.2-371.2. Prohibiting purchase or possession of tobacco products, nicotine vapor products,**  
3032 **and alternative nicotine products by minors or sale of tobacco products, nicotine vapor products,**  
3033 **and alternative nicotine products to minors.**

3034 A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any  
3035 person less than 18 years of age, knowing or having reason to believe that such person is less than 18  
3036 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product.

3037 Tobacco products may be sold from a vending machine only if the machine is (i) posted with a  
3038 notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco  
3039 products by minors is unlawful and (ii) located in a place which is not open to the general public and is  
3040 not generally accessible to minors. An establishment which prohibits the presence of minors unless  
3041 accompanied by an adult is not open to the general public.

3042 B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco  
3043 product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall  
3044 not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine  
3045 products by a person less than 18 years of age making a delivery of tobacco products, nicotine vapor  
3046 products, or alternative nicotine products in pursuance of his employment. This subsection shall not  
3047 apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when  
3048 the same is necessary in the performance of his duties.

3049 C. No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to  
3050 any individual who does not demonstrate, by producing a driver's license or similar photo identification  
3051 issued by a government agency, that the individual is at least 18 years of age. Such identification is not  
3052 required from an individual whom the person has reason to believe is at least 18 years of age or who  
3053 the person knows is at least 18 years of age. Proof that the person demanded, was shown, and  
3054 reasonably relied upon a photo identification stating that the individual was at least 18 years of age shall  
3055 be a defense to any action brought under this subsection. In determining whether a person had reason to  
3056 believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to,  
3057 proof of the general appearance, facial characteristics, behavior, and manner of the individual.

3058 This subsection shall not apply to mail order or Internet sales, provided that the person offering the  
3059 tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or  
3060 the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine  
3061 product verifies that the purchaser is at least 18 years of age through a commercially available database  
3062 that is regularly used by businesses or governmental entities for the purpose of age and identity  
3063 verification and (ii) uses a method of mailing, shipping, or delivery that requires the purchaser's  
3064 signature before the tobacco product, nicotine vapor product, or alternative nicotine product will be  
3065 released to the purchaser.

3066 D. A violation of subsection A or C by an individual or by a separate retail establishment that  
3067 involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is  
3068 punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200  
3069 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

3070 A violation of subsection A or C by an individual or by a separate retail establishment that involves  
3071 the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a  
3072 first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the

amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers for sale any tobacco product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative nicotine products to any person under 18 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services may promulgate regulations which allow the Department to undertake the activities necessary to comply with such regulations.

3. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

F. Nothing in this section shall be construed to create a private cause of action.

G. Agents of the Virginia Alcoholic Beverage Control ~~Board~~ Authority designated pursuant to § 4.1-105 may issue a summons for any violation of this section.

H. As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

**§ 19.2-81. Arrest without warrant authorized in certain cases.**

3134 A. The following officers shall have the powers of arrest as provided in this section:  
3135 1. Members of the State Police force of the Commonwealth;  
3136 2. Sheriffs of the various counties and cities, and their deputies;  
3137 3. Members of any county police force or any duly constituted police force of any city or town of  
3138 the Commonwealth;  
3139 4. The Commissioner, members and employees of the Marine Resources Commission granted the  
3140 power of arrest pursuant to § 28.2-900;  
3141 5. Regular conservation police officers appointed pursuant to § 29.1-200;  
3142 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and  
3143 petty officers authorized under § 29.1-205 to make arrests;  
3144 7. Conservation officers appointed pursuant to § 10.1-115;  
3145 8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles  
3146 appointed pursuant to § 46.2-217;  
3147 9. Special agents of the ~~Department of~~ Virginia Alcoholic Beverage Control Authority; and  
3148 10. Campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23.  
3149 B. Such officers may arrest without a warrant any person who commits any crime in the presence of  
3150 the officer and any person whom he has reasonable grounds or probable cause to suspect of having  
3151 committed a felony not in his presence.  
3152 Such officers may arrest without a warrant any person whom the officer has probable cause to  
3153 suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of  
3154 § 29.1-738 or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii)  
3155 in violation of an order issued pursuant to § 29.1-738.4 and may thereafter transfer custody of the  
3156 person arrested to another officer, who may obtain a warrant based upon statements made to him by the  
3157 arresting officer.  
3158 C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as  
3159 defined in § 29.1-733.2 or motorboat, or at any hospital or medical facility to which any person  
3160 involved in such accident has been transported, or in the apprehension of any person charged with the  
3161 theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable  
3162 grounds to believe, based upon personal investigation, including information obtained from eyewitnesses,  
3163 that a crime has been committed by any person then and there present, apprehend such person without a  
3164 warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable  
3165 location where a vehicle or person involved in an accident has been moved at the direction of a  
3166 law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring  
3167 public.  
3168 D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any  
3169 location any person whom the officer has probable cause to suspect of driving or operating a motor  
3170 vehicle, watercraft or motorboat while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or  
3171 subsection B of § 29.1-738; or a substantially similar ordinance of any county, city, or town in the  
3172 Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may,  
3173 within three hours of the alleged offense, arrest without a warrant at any location any person whom the  
3174 officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order  
3175 issued pursuant to § 29.1-738.4, whether or not the offense was committed in such officer's presence.  
3176 E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in  
3177 another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout,  
3178 facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram,  
3179 computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a  
3180 reasonably accurate description of such person wanted and the crime alleged.  
3181 F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not  
3182 committed in his presence when the officer receives a radio message from his department or other  
3183 law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.  
3184 G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in  
3185 their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance,  
3186 (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)  
3187 brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of  
3188 § 18.2-137, when such property is located on premises used for business or commercial purposes, or a  
3189 similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of  
3190 the person who observed the alleged offense. The arresting officer may issue a summons to any person  
3191 arrested under this section for a misdemeanor violation involving shoplifting.  
3192 **§ 19.2-386.21. Forfeiture of counterfeit and contraband cigarettes.**  
3193 Counterfeit cigarettes possessed in violation of § 18.2-246.14 and cigarettes possessed in violation of  
3194 § 58.1-1017 or 58.1-1017.1 shall be subject to seizure, forfeiture, and destruction or court-ordered  
3195 assignment for use by a law-enforcement undercover operation by the Virginia Alcoholic Beverage

Control Board Authority or any law-enforcement officer of the Commonwealth. However, any undercover operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain under the control and command of law enforcement and shall not be distributed to a member of the general public who is not the subject of a criminal investigation. All fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied mutatis mutandis.

**§ 19.2-389. Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international

3257 travel, including, but not limited to, issuing visas and passports;

3258 11. A person requesting a copy of his own criminal history record information as defined in  
3259 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
3260 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
3261 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
3262 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
3263 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime  
3264 Solvers or Crime Line program as defined in § 15.2-1713.1;

3265 12. Administrators and board presidents of and applicants for licensure or registration as a child  
3266 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
3267 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
3268 volunteers at such facilities, caretakers, and other adults living in family day care homes or homes  
3269 approved by family day care systems, and foster and adoptive parent applicants of private child-placing  
3270 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data  
3271 shall not be further disseminated by the facility or agency to any party other than the data subject, the  
3272 Commissioner of Social Services' representative or a federal or state authority or court as may be  
3273 required to comply with an express requirement of law for such further dissemination;

3274 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
3275 offered or who accept public school employment and those current school board employees for whom a  
3276 report of arrest has been made pursuant to § 19.2-83.1;

3277 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
3278 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
3279 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

3280 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
3281 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
3282 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to  
3283 the limitations set out in subsection E;

3284 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers  
3285 for the conduct of investigations of applicants for compensated employment in licensed homes for adults  
3286 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed  
3287 adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

3288 17. The *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* for the conduct of investigations as set  
3289 forth in § 4.1-103.1;

3290 18. The State Board of Elections and authorized officers and employees thereof and general registrars  
3291 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to  
3292 voter registration, limited to any record of felony convictions;

3293 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
3294 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
3295 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

3296 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
3297 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
3298 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

3299 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
3300 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
3301 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
3302 services;

3303 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
3304 Department for the purpose of determining an individual's fitness for employment pursuant to  
3305 departmental instructions;

3306 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
3307 elementary or secondary schools which are accredited by a statewide accrediting organization  
3308 recognized, prior to January 1, 1996, by the State Board of Education or a private organization  
3309 coordinating such records information on behalf of such governing boards or administrators pursuant to  
3310 a written agreement with the Department of State Police;

3311 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
3312 who are offered or accept employment;

3313 25. Members of a threat assessment team established by a public institution of higher education  
3314 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of  
3315 assessing or intervening with an individual whose behavior may present a threat to safety; however, no  
3316 member of a threat assessment team shall redisclose any criminal history record information obtained  
3317 pursuant to this section or otherwise use any record of an individual beyond the purpose that such  
3318 disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for

3380 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

3381 43. The Department of Social Services and directors of local departments of social services for the  
3382 purpose of screening individuals seeking to enter into a contract with the Department of Social Services  
3383 or a local department of social services for the provision of child care services for which child care  
3384 subsidy payments may be provided; and

3385 44. Other entities as otherwise provided by law.

3386 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
3387 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
3388 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
3389 designated in the order on whom a report has been made under the provisions of this chapter.

3390 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to  
3391 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the  
3392 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
3393 copy of conviction data covering the person named in the request to the person making the request;  
3394 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
3395 making of such request. A person receiving a copy of his own conviction data may utilize or further  
3396 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
3397 subject, the person making the request shall be furnished at his cost a certification to that effect.

3398 B. Use of criminal history record information disseminated to noncriminal justice agencies under this  
3399 section shall be limited to the purposes for which it was given and may not be disseminated further.

3400 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
3401 history record information for employment or licensing inquiries except as provided by law.

3402 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
3403 Exchange prior to dissemination of any criminal history record information on offenses required to be  
3404 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
3405 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
3406 where time is of the essence and the normal response time of the Exchange would exceed the necessary  
3407 time period. A criminal justice agency to whom a request has been made for the dissemination of  
3408 criminal history record information that is required to be reported to the Central Criminal Records  
3409 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
3410 Dissemination of information regarding offenses not required to be reported to the Exchange shall be  
3411 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

3412 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
3413 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange  
3414 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

3415 F. Criminal history information provided to licensed assisted living facilities, licensed district homes  
3416 for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the  
3417 convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

3418 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
3419 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

3420 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
3421 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
3422 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
3423 the request to the employer or prospective employer making the request, provided that the person on  
3424 whom the data is being obtained has consented in writing to the making of such request and has  
3425 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
3426 is maintained on the person named in the request, the requesting employer or prospective employer shall  
3427 be furnished at his cost a certification to that effect. The criminal history record search shall be  
3428 conducted on forms provided by the Exchange.

3429 **§ 22.1-206. Instruction concerning drugs, alcohol, and substance abuse.**

3430 A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed  
3431 by the Board of Education.

3432 B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking,  
3433 and drunk driving shall be provided in the public schools. The ~~Department of~~ *Virginia Alcoholic*  
3434 *Beverage Control Authority* shall provide educational materials to the Department of Education. The  
3435 Department of Education shall review and shall distribute such materials as are approved to the public  
3436 schools.

3437 **§ 23-7.4:1. Waiver of tuition and certain charges and fees for eligible children and spouses of**  
3438 **certain military service members, eligible children and spouses of certain public safety personnel,**  
3439 **and certain foreign students.**

3440 A. There is hereby established the Virginia Military Survivors and Dependents Education Program.  
3441 Qualified survivors and dependents of military service members, who have been admitted to any public



institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia, upon certification to the Commissioner of the Department of Veterans Services of eligibility under this subsection, shall be admitted free of tuition and all required fees.

The Virginia Military Survivors and Dependents Education Program shall be implemented pursuant to the following:

1. For the purposes of this subsection, "qualified survivors and dependents" means the spouse or a child between the ages of 16 and 29 of a military service member who, while serving as an active duty member in the United States Armed Forces, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war, or of a veteran who, due to such service, has been rated by the United States Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled, and has been discharged or released under conditions other than dishonorable. However, the Commissioner of the Department of Veterans Services may certify dependents above the age of 29 in those cases in which extenuating circumstances prevented the dependent child from using his benefits before the age of 30.

2. Such qualified survivors and dependents shall be eligible for the benefits conferred by this subsection if the military service member who was killed, is missing in action, is a prisoner of war, or is disabled (i) was a bona fide domiciliary of Virginia at the time of entering such active military service or called to active duty as a member of the Armed Forces Reserves or Virginia National Guard Reserve; (ii) is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to, or has had a physical presence in Virginia for at least five years immediately prior to, the date on which the admission application was submitted by or on behalf of such qualified survivor or dependent for admission to such institution of higher education or other public accredited postsecondary institution; (iii) if deceased, was a bona fide domiciliary of Virginia on the date of his death and had been a bona fide domiciliary of Virginia for at least five years immediately prior to his death or had a physical presence in Virginia on the date of his death and has had a physical presence in Virginia for at least five years immediately prior to his death; (iv) in the case of a qualified child, is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to or has had a physical presence in Virginia for at least five years immediately prior to the date on which the admission application was submitted by or on behalf of such child; or (v) in the case of a qualified spouse, is deceased and the surviving spouse had been, at some time previous to marrying the deceased spouse, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years or has had a physical presence in Virginia for at least five years prior to the date on which the admission application was submitted by such qualified spouse.

3. From such funds as may be appropriated and from such gifts, bequests, and any gifts, grants, or donations from public or private sources, there is hereby established the Virginia Military Survivors and Dependents Education Fund for the sole purpose of providing financial assistance, in an amount (i) up to \$2,000 or (ii) as provided in the appropriation act, for board and room charges, books and supplies, and other expenses at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia for the use and benefit of qualified survivors and dependents.

Each year, from the funds available in the Virginia Military Survivors and Dependents Education Fund, the State Council of Higher Education for Virginia and its member institutions shall determine the amount and the manner in which financial assistance shall be made available to beneficiaries and shall make that information available to the Commissioner of the Department of Veterans Services for distribution.

The State Council of Higher Education for Virginia shall be responsible for disbursing to the institutions the funds appropriated or otherwise made available by the Commonwealth of Virginia to support the Virginia Military Survivors and Dependents Education Fund and shall report to the Commissioner of the Department of Veterans Services the beneficiaries' completion rate.

The maximum amount to be expended for each such survivor or dependent pursuant to this subsection shall not exceed, when combined with any other form of scholarship, grant, or waiver, the actual costs related to the survivor's or dependent's educational expenses allowed under this subsection.

4. The Commissioner of the Department of Veterans Services shall designate a senior-level official who shall be responsible for developing and implementing the agency's strategy for disseminating information about the Military Survivors and Dependents Education Program to those spouses and dependents who may qualify. The Department of Veterans Services shall coordinate with the United

3503 States Department of Veterans Affairs to identify veterans and qualified survivors and dependents. The  
3504 Commissioner of the Department of Veterans Services shall report annually to the Governor and the  
3505 General Assembly as to the agency's policies and strategies relating to dissemination of information  
3506 about the Program. The report shall also include the number of current beneficiaries, the educational  
3507 institutions attended by beneficiaries, and the completion rate of the beneficiaries.

3508 B. The surviving spouse and any child between the ages of 16 and 25 whose parent or whose spouse  
3509 has been killed in the line of duty while employed or serving as a law-enforcement officer, including as  
3510 a campus police officer appointed under Chapter 17 (§ 23-232 et seq.), sworn law-enforcement officer,  
3511 firefighter, special forest warden pursuant to § 10.1-1135, member of a rescue squad, special agent of  
3512 the ~~Department of Virginia~~ Alcoholic Beverage Control *Authority*, state correctional, regional or local  
3513 jail officer, regional jail or jail farm superintendent, sheriff, or deputy sheriff, member of the Virginia  
3514 National Guard while serving on official state duty or federal duty under Title 32 of the United States  
3515 Code, or member of the Virginia Defense Force while serving on official state duty, and any person  
3516 whose spouse was killed in the line of duty while employed or serving in any of such occupations, shall  
3517 be entitled to free undergraduate tuition and the payment of required fees at any public institution of  
3518 higher education or other public accredited postsecondary institution granting a degree, diploma, or  
3519 certificate in Virginia under the following conditions:

3520 1. The ~~chief administrative officer~~ *Chief Executive Officer* of the Virginia Alcoholic Beverage  
3521 Control ~~Board~~ *Authority*, emergency medical services agency, law-enforcement agency, or other  
3522 appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was  
3523 employed or serving as a law-enforcement officer, sworn law-enforcement officer, firefighter, special  
3524 forest warden pursuant to § 10.1-1135, or member of a rescue squad or in any other capacity as  
3525 specified in this section and was killed in the line of duty while serving or living in the Commonwealth;  
3526 and

3527 2. The child or spouse shall have been offered admission to such public institution of higher  
3528 education or other public accredited postsecondary institution. Any child or spouse who believes he is  
3529 eligible shall apply to the public institution of higher education or other accredited postsecondary  
3530 institution to which he has been admitted for the benefits provided by this subsection. The institution  
3531 shall determine the eligibility of the applicant for these benefits and shall also ascertain that the  
3532 recipients are in attendance and are making satisfactory progress. The amounts payable for tuition,  
3533 institutional charges and required fees, and books and supplies for the applicants shall be waived by the  
3534 institution accepting the students.

3535 C. For the purposes of subsection B, user fees, such as room and board charges, shall not be  
3536 included in this authorization to waive tuition and fees. However, all required educational and auxiliary  
3537 fees shall be waived along with tuition.

3538 D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public  
3539 institution of higher education through a student exchange program approved by such institution,  
3540 provided the number of foreign students does not exceed the number of students paying full tuition and  
3541 required fees to the institution under the provisions of the exchange program for a given three-year  
3542 period.

3543 E. Each public institution of higher education and other public accredited postsecondary institution  
3544 granting a degree, diploma, or certificate in Virginia shall include in its catalogue or equivalent  
3545 publication a statement describing the benefits provided by subsections A and B.

3546 **§ 32.1-357. Board of Trustees; appointment; officers; quorum; executive committee;**  
3547 **compensation and expenses.**

3548 A. The Foundation shall be governed and administered by a Board of Trustees consisting of 23  
3549 members. Two members shall be appointed by the Speaker of the House of Delegates from among the  
3550 membership of the House of Delegates, one representing rural interests and one representing urban  
3551 interests; two members shall be appointed by the Senate Committee on Rules, one representing rural  
3552 interests and one representing urban interests, from among the membership of the Senate; two members  
3553 shall be the Commissioner of the Department of Health or his designee and the Chairman of the *Board*  
3554 *of Directors of the Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* or his designee; and 17  
3555 nonlegislative citizen members shall be appointed by the Governor, subject to confirmation by the  
3556 General Assembly, as follows: (i) five designated representatives of public health organizations, such as  
3557 the American Cancer Society, American Heart Association, Virginia Pediatric Society, Virginia Academy  
3558 of Family Physicians, Virginia Dental Association, American Lung Association of Virginia, Medical  
3559 Society of Virginia, Virginia Association of School Nurses, Virginia Nurses Association, and the  
3560 Virginia Thoracic Society; (ii) four health professionals in the fields of oncology, cardiology, pulmonary  
3561 medicine, and pediatrics; and (iii) eight citizens at large, including two youths. Of the eight citizen at  
3562 large members, three adults shall be appointed by the Governor from a list of six provided by members  
3563 of the General Assembly appointed to the Foundation and one member who is under the age of 18 years  
3564 shall be appointed by the Governor from a list of three provided by the members of the General

Assembly appointed to the Foundation.

Legislative members and the Commissioner of the Department of Health and the Chairman of the Board of Directors of the Virginia Alcoholic Beverage Control Board Authority shall serve terms coincident with their terms of office. Following the initial staggering of terms, nonlegislative citizen members shall serve four-year terms. Vacancies in the membership of the Board shall be filled by appointment for the unexpired portion of the term. Vacancies shall be filled in the same manner as the original appointments. Legislative members may be reappointed for successive terms. No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the members shall enter upon the performance of their duties.

B. The Foundation shall appoint from the membership of the Board a chairman and vice-chairman, both of whom shall serve in such capacities at the pleasure of the Foundation. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The Board shall meet annually or more frequently at the call of the chairman.

The Board may establish an executive committee composed of the chairman, vice-chairman, and three additional members elected by the Board from its membership. The chairman of the Board shall serve as the chairman of the executive committee and shall preside over its meetings. In the absence of the chairman, the vice-chairman shall preside. The executive committee may exercise the powers and transact the business of the Board in the absence of the Board or when otherwise directed or authorized by the Board. A majority of the members of the executive committee shall constitute a quorum for the transaction of business. Any actions or business conducted by the executive committee shall be acted upon by the full board as soon as practicable.

C. Legislative members shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided by §§ 2.2-2813 and 2.2-2825. Such compensation and expenses shall be paid from the Fund.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the Board or his service to the Foundation.

E. Members of the Board and employees of the Foundation shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

### **§ 33.2-613. Free use of toll facilities by certain state officers and employees; penalties.**

A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of the Dulles Toll Road during rush hours by the Board; however, notwithstanding the provisions of subdivision B 1 of § 56-543 said vehicles shall not be permitted toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in the Commonwealth without the payment of toll while in the performance of their official duties:

1. The Commissioner of Highways;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. Members of the Board of Directors of the Virginia Alcoholic Beverage Control Board Authority;
7. Employees of the regulatory and hearings divisions of the Department of Virginia Alcoholic Beverage Control Authority and special agents of the Department of Virginia Alcoholic Beverage Control Authority;
8. The Commissioner of the Department of Motor Vehicles;
9. Employees of the Department of Motor Vehicles;
10. Local police officers;
11. Sheriffs and their deputies;
12. Regional jail officials;
13. Animal wardens;
14. The Director and officers of the Department of Game and Inland Fisheries;
15. Persons operating firefighting equipment and ambulances owned by a political subdivision of the

Commonwealth or a nonprofit association or corporation;

16. Operators of school buses being used to transport pupils to or from schools;

17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;

18. Employees of the Department of Rail and Public Transportation;

19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and

20. Law-enforcement officers of the Virginia Marine Resources Commission.

B. Notwithstanding the provision of subsection A requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department of Transportation shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.

1. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner of Highways or his designee.

2. Major incidents that may require the temporary suspension of toll collection operations shall include (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic accidents, such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

3. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed \$2,000 for any individual incident, be paid to the Department of Transportation for deposit into the toll road fund.

C. Any tollgate keeper who refuses to permit the persons listed in subsection A to use any toll bridge, toll ferry, toll tunnel, or toll road upon presentation of such a toll pass is guilty of a misdemeanor punishable by a fine of not more than \$50 and not less than \$2.50. Any person other than those listed in subsection A who exhibits any such toll pass for the purpose of using any toll bridge, toll ferry, toll tunnel, or toll road is guilty of a Class 1 misdemeanor.

D. Any vehicle operated by the holder of a valid driver's license issued by the Commonwealth or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in the Commonwealth if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;

2. The driver of the vehicle has been certified, either by a physician licensed by the Commonwealth or any other state or by the Adjudication Office of the U.S. Department of Veterans Affairs, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that substantially impair his ability to deposit coins in toll baskets;

3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and

4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in the Commonwealth. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

E. Nothing contained in this section or in § 33.2-612 or 33.2-1718 shall operate to affect the provisions of § 22.1-187.

F. Notwithstanding the provisions of subsections A, B, and C, only the following persons may use the Chesapeake Bay Bridge-Tunnel, facilities of the Richmond Metropolitan Transportation Authority, or facilities of an operator authorized to operate a toll facility pursuant to the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commissioner of Highways;

2. Members of the Commonwealth Transportation Board;

3. Employees of the Department of Transportation;

4. The Superintendent of the Department of State Police;

5. Officers and employees of the Department of State Police;

6. The Commissioner of the Department of Motor Vehicles;

7. Employees of the Department of Motor Vehicles; and

8. Sheriffs and deputy sheriffs.

G. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in Virginia controlled by the Richmond Metropolitan Transportation Authority, pursuant to the requirements

of subdivisions D 1 through 4.

**§ 48-17.1. Temporary injunctions against alcoholic beverage sales.**

A. Any locality by or through its mayor, chief executive, or attorney may petition a circuit court to temporarily enjoin the sale of alcohol at any establishment licensed by the *Virginia* Alcoholic Beverage Control Board Authority. The basis for such petition shall be the operator of the establishment has allowed it to become a meeting place for persons committing serious criminal violations of the law on or immediately adjacent to the premises so frequent and serious as to be deemed a continuing threat to public safety, as represented in an affidavit by the chief law-enforcement officer of the locality, supported by records of such criminal acts. The court shall, upon the presentation of evidence at a hearing on the matter, grant a temporary injunction, without bond, enjoining the sale of alcohol at the establishment, if it appears to the satisfaction of the court that the threat to public safety complained of exists and is likely to continue if such injunction is not granted. The court hearing on the petition shall be held within 10 days of service upon the respondent. The respondent shall be served with notice of the time and place of the hearing and copies of all documentary evidence to be relied upon by the complainant at such hearing. Any injunction issued by the court shall be dissolved in the event the court later finds that the threat to public safety that is the basis of the injunction has been abated by reason of a change of ownership, management, or business operations at the establishment, or other change in circumstance.

B. The *Virginia* Alcoholic Beverage Control Board Authority shall be given notice of any hearing under this section. In the event an injunction is granted, the *Virginia* Alcoholic Beverage Control Board Authority shall initiate an investigation into the activities at the establishment complained of and conduct an administrative hearing. After the *Virginia* Alcoholic Beverage Control Board Authority hearing and when a final determination has been issued by the *Virginia* Alcoholic Beverage Control Board Authority, regardless of disposition, any injunction issued hereunder shall be null, without further action by the complainant, respondent, or the court.

**§ 51.1-212. Definitions.**

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

"Employee" means any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii) campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the Department of *Virginia* Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including correctional officers employed at a juvenile correction facility as the term is defined in § 66-25.3, (vii) any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

"Member" means any person included in the membership of the Retirement System as provided in this chapter.

"Normal retirement date" means a member's sixtieth birthday.

"Retirement System" means the Virginia Law Officers' Retirement System.

**§ 58.1-3. Secrecy of information; penalties.**

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any

3749 information required for building permits;

3750 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court  
3751 pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

3752 6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when  
3753 requested by the General Assembly or any duly constituted committee of the General Assembly;

3754 7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the  
3755 provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the  
3756 Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow  
3757 fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the  
3758 Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two  
3759 calendar years or in any year in which the Attorney General receives Stamping Agent information that  
3760 potentially alters the required escrow deposit of the manufacturer. The information shall only be  
3761 provided in the following manner: the manufacturer may make a written request, on a quarterly or  
3762 yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the  
3763 amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who  
3764 reported stamping or selling its products and the amount reported. The Attorney General shall provide  
3765 the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the  
3766 reports the Stamping Agents filed with the Attorney General, it must first request them from the  
3767 Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the  
3768 reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the  
3769 Attorney General, including a copy of the prior written request to the Stamping Agent and any response  
3770 received, for copies of any reports not received. The Attorney General shall provide copies of the  
3771 reports within 45 days of receipt of the request.

3772 B. Nothing contained in this section shall be construed to prohibit the publication of statistics so  
3773 classified as to prevent the identification of particular reports or returns and the items thereof or the  
3774 publication of delinquent lists showing the names of taxpayers who are currently delinquent, together  
3775 with any relevant information which in the opinion of the Department may assist in the collection of  
3776 such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department,  
3777 upon request by the General Assembly or any duly constituted committee of the General Assembly,  
3778 shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers,  
3779 regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This  
3780 section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or  
3781 corporation is licensed to do business in that locality and divulging, upon written request, the name and  
3782 address of any person, firm or corporation transacting business under a fictitious name. Additionally,  
3783 notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon  
3784 written request stating the reason for such request, the Tax Commissioner with information obtained  
3785 from local tax returns and other information pertaining to the income, sales and property of any person,  
3786 firm or corporation licensed to do business in that locality.

3787 C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax  
3788 Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director  
3789 of finance or other similar collector of county, city or town taxes who, for the performance of his  
3790 official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the  
3791 Commissioner of the Department of Social Services, upon written request, information on the amount of  
3792 income, filing status, number and type of dependents, and whether a federal earned income tax credit  
3793 has been claimed as reported by persons on their state income tax returns who have applied for public  
3794 assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer  
3795 of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the  
3796 names and home addresses of those persons identified by the designated guarantor as having delinquent  
3797 loans guaranteed by the designated guarantor; (iv) provide current address information upon request to  
3798 state agencies and institutions for their confidential use in facilitating the collection of accounts  
3799 receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the  
3800 collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the  
3801 Commissioner of the Virginia Employment Commission, after entering into a written agreement, such  
3802 tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid  
3803 benefits; (vi) provide to the *Virginia Alcoholic Beverage Control Board Authority*, upon entering into a  
3804 written agreement, such tax information as may be necessary to facilitate the collection of state and local  
3805 taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the  
3806 Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who  
3807 owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax  
3808 information as may be necessary to facilitate the location of owners and holders of unclaimed property,  
3809 as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written  
3810 agreement, such tax information as may be necessary to facilitate the collection of taxes and fees

administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; and (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such

jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor.

**§ 58.1-3651. Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003.**

A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;

2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* to such organization, for use on such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to



be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), 3 (§ 58.1-3609 et seq.) or 4 (§ 58.1-3650 et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of this chapter may be revoked in accordance with the provisions of § 58.1-3605.

**§ 59.1-148.3. Purchase of handguns of certain officers.**

A. The Department of State Police, the Department of Game and Inland Fisheries, the Department of Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, and any institution of higher learning named in § 23-14 may allow any campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23, retiring on or after July 1, 1991, who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously issued to him by the agency or institution at a price of \$1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia Retirement System. Other weapons issued by the Department of State Police for personal duty use of an officer, may, with approval of the Superintendent, be sold to the officer subject to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with 5 or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of \$1.

D. The governing board of any institution of higher learning named in § 23-14 may allow any campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of \$1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for \$1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer

3995 currently employed by the agency to purchase his service handgun, with the approval of the chief  
3996 law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the  
3997 agency has purchased new service handguns for its officers, and the handgun subject to the sale is no  
3998 longer used by the agency or officer in the course of duty.

3999 **§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or**  
4000 **heart disease, cancer.**

4001 A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of  
4002 Emergency Management hazardous materials officers or (ii) any health condition or impairment of such  
4003 firefighters or Department of Emergency Management hazardous materials officers resulting in total or  
4004 partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are  
4005 covered by this title unless such presumption is overcome by a preponderance of competent evidence to  
4006 the contrary.

4007 B. Hypertension or heart disease causing the death of, or any health condition or impairment  
4008 resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State  
4009 Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv)  
4010 sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers,  
4011 (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police  
4012 officers, (viii) conservation police officers who are full-time sworn members of the enforcement division  
4013 of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the  
4014 ~~Department of Virginia~~ Alcoholic Beverage Control Authority appointed under the provisions of Chapter  
4015 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports  
4016 Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers  
4017 of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii)  
4018 officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn  
4019 officers of the police force established and maintained by the Virginia Port Authority, and (xiv) campus  
4020 police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public  
4021 institution of higher education shall be presumed to be occupational diseases, suffered in the line of  
4022 duty, that are covered by this title unless such presumption is overcome by a preponderance of  
4023 competent evidence to the contrary.

4024 C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or  
4025 any health condition or impairment resulting in total or partial disability of, any volunteer or salaried  
4026 firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle  
4027 enforcement officer or motor carrier safety trooper employed by the Department of State Police, or  
4028 full-time sworn member of the enforcement division of the Department of Motor Vehicles having  
4029 completed ~~twelve~~ 12 years of continuous service who has a contact with a toxic substance encountered  
4030 in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is  
4031 covered by this title, unless such presumption is overcome by a preponderance of competent evidence to  
4032 the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected  
4033 carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is  
4034 suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

4035 D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to  
4036 invoke them have, if requested by the private employer, appointing authority or governing body  
4037 employing them, undergone preemployment physical examinations that (i) were conducted prior to the  
4038 making of any claims under this title that rely on such presumptions, (ii) were performed by physicians  
4039 whose qualifications are as prescribed by the private employer, appointing authority or governing body  
4040 employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the  
4041 private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such  
4042 persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such  
4043 examinations.

4044 E. Persons making claims under this title who rely on such presumptions shall, upon the request of  
4045 private employers, appointing authorities or governing bodies employing such persons, submit to  
4046 physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or  
4047 their representatives and (ii) consisting of such tests and studies as may reasonably be required by such  
4048 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the  
4049 election of such claimant, be present at such examination.

4050 F. Whenever a claim for death benefits is made under this title and the presumptions of this section  
4051 are invoked, any person entitled to make such claim shall, upon the request of the appropriate private  
4052 employer, appointing authority or governing body that had employed the deceased, submit the body of  
4053 the deceased to a postmortem examination as may be directed by the Commission. A qualified  
4054 physician, selected and compensated by the person entitled to make the claim, may, at the election of  
4055 such claimant, be present at such postmortem examination.

4056 G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary

and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers primarily to perform firefighting services.

**§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the ~~Department of Virginia~~ Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officer of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority, or (xv) any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education, who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

B. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone

4118 preemployment physical examinations that (i) were conducted prior to the making of any claims under  
4119 this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as  
4120 prescribed by the appointing authority or governing body employing such persons, (iii) included such  
4121 appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may  
4122 have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or  
4123 HIV at the time of such examinations. The presumptions described in subsection A shall not be effective  
4124 until six months following such examinations, unless such persons entitled to invoke such presumption  
4125 can demonstrate a documented exposure during the six-month period.

4126 F. Persons making claims under this title who rely on such presumption shall, upon the request of  
4127 appointing authorities or governing bodies employing such persons, submit to physical examinations (i)  
4128 conducted by physicians selected by such appointing authorities or governing bodies or their  
4129 representatives and (ii) consisting of such tests and studies as may reasonably be required by such  
4130 physicians. However, a qualified physician, selected and compensated by the claimant, may, at the  
4131 election of such claimant, be present at such examination.

4132 **2. That the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007 are**  
4133 **amended and reenacted as follows:**

4134 **4. That the *Virginia* Alcoholic Beverage Control Board Authority shall assist the Commissioner**  
4135 **of Agriculture and Consumer Services in the formation and operation of the nonprofit, nonstock**  
4136 **corporation established pursuant to § 3.1-14.01 of this act.**

4137 **3. That § 4.1-102 of the Code of Virginia is repealed.**

4138 **4. That the provisions of this act shall become effective on July 1, 2018.**

4139 **5. That the regulations of the Alcoholic Beverage Control Board promulgated pursuant to Title 4.1**  
4140 **of the Code of Virginia shall be administered by the Virginia Alcoholic Beverage Control**  
4141 **Authority and shall remain in full force and effect until altered, amended, or rescinded by the**  
4142 **Board of Directors of the Virginia Alcoholic Beverage Control Authority.**

4143 **6. That in the event that ex officio membership on any board, commission, council, committee, or**  
4144 **other body is affected by the provisions of this act, the Governor shall designate an appropriate**  
4145 **successor officer, employee, or member of a board or agency established pursuant to the**  
4146 **provisions of this act as a replacement.**

4147 **7. That the Governor may transfer an appropriation or any portion thereof within a state agency**  
4148 **established, abolished, or otherwise affected by the provisions of this act, or from one such agency**  
4149 **to another, to support the changes in organization or responsibility resulting from or required by**  
4150 **the provisions of this act.**

4151 **8. That as of July 1, 2018, the Virginia Alcoholic Beverage Control Authority shall be deemed**  
4152 **successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage**  
4153 **Control Board to the extent this act transfers powers and duties. All right, title, and interest in**  
4154 **and to real or tangible personal property vested in the Department of Alcoholic Beverage Control**  
4155 **or the Alcoholic Beverage Control Board to the extent that this act transfers powers and duties as**  
4156 **of the effective date of this act shall be transferred and taken as standing in the name of the**  
4157 **Virginia Alcoholic Beverage Control Authority.**

4158 **9. That wherever in the Code of Virginia the term "Department of Alcoholic Beverage Control" is**  
4159 **used, it shall be deemed to mean the Virginia Alcoholic Beverage Control Authority and wherever**  
4160 **in the Code of Virginia the term "Alcoholic Beverage Control Board" is used, it shall mean the**  
4161 **Board of Directors of the Virginia Alcoholic Beverage Control Authority.**

4162 **10. That any accrued sick leave or annual leave of any employee of the Department of Alcoholic**  
4163 **Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in**  
4164 **accordance with the provisions of this act shall transfer with the employee.**