

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-1604, 2.2-4310, 2.2-4311.1, 4.1-203.1, 6.2-2107.1, 13.1-753, 13.1-769, 13.1-915, 13.1-931, 13.1-1050.3, 13.1-1056.2, 13.1-1238.2, 13.1-1246.2, 18.2-308.09, 18.2-308.2:3, 19.2-81.6, 19.2-294.2, 22.1-287, 23.1-503, 32.1-343, 38.2-6500, 40.1-11.1, 46.2-328.1, 46.2-341.12, as it is currently effective and as it may become effective, 47.1-2, 50-73.52:6, 50-73.58:2, 53.1-218, 53.1-219, 53.1-220.1, 53.1-220.2, 55.1-100, 58.1-904, 60.2-214, 60.2-617, 64.2-203, 65.2-101, and 66-3.2 of the Code of Virginia, relating to persons who are not citizens or nationals of the United States; terminology.

[H 891]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-4310, 2.2-4311.1, 4.1-203.1, 6.2-2107.1, 13.1-753, 13.1-769, 13.1-915, 13.1-931, 13.1-1050.3, 13.1-1056.2, 13.1-1238.2, 13.1-1246.2, 18.2-308.09, 18.2-308.2:3, 19.2-81.6, 19.2-294.2, 22.1-287, 23.1-503, 32.1-343, 38.2-6500, 40.1-11.1, 46.2-328.1, 46.2-341.12, as it is currently effective and as it may become effective, 47.1-2, 50-73.52:6, 50-73.58:2, 53.1-218, 53.1-219, 53.1-220.1, 53.1-220.2, 55.1-100, 58.1-904, 60.2-214, 60.2-617, 64.2-203, 65.2-101, and 66-3.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1604. Definitions.

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

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"Minority individual" means an individual who is a *United States* citizen ~~of the United States~~ or a ~~legal resident alien~~ *lawfully admitted permanent resident* and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are ~~U.S.~~ *United States* citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are ~~U.S.~~ *United States* citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, and both the management and daily business operations are controlled by one or more minority individuals, or any historically

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black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are *U.S. United States* citizens or ~~legal resident aliens lawfully admitted permanent residents~~ and, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are *U.S. United States* citizens or ~~legal resident aliens lawfully admitted permanent residents~~, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are *U.S. United States* citizens or ~~legal resident aliens lawfully admitted permanent residents~~, and both the management and daily business operations are controlled by one or more women.

§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned businesses and employment services organizations.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations and service disabled veteran-owned businesses shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

E. In the solicitation or awarding of contracts, no state agency, department, or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department, or institution has made a written determination that employing ex-offenders on

the specific contract is not in its best interest.

F. As used in this section:

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Minority individual" means an individual who is a *United States* citizen ~~of the United States~~ or a ~~legal resident alien~~ *lawfully admitted permanent resident* and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are ~~U.S. United States~~ citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are ~~U.S. United States~~ citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, independently owned and controlled by one or more individuals who are ~~U.S. United States~~ citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are ~~U.S. United States~~ citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are ~~U.S. United States~~ citizens or ~~legal resident aliens~~ *lawfully admitted permanent residents*, and both the management and daily business operations are controlled by one or more women.

§ 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ ~~an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986~~ *any person who is not lawfully present in the United States or is not authorized for employment as described in 8*

U.S.C. § 1324a(h)(3).

§ 4.1-203.1. Managers of licensed retail establishments.

The Board may suspend or revoke any license if it finds that the licensee has been convicted for a violation of 8 U.S.C. § ~~1324a~~ (f) 1324a(f), as amended, for actions of its managers or otherwise constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* on the licensed premises in the Commonwealth *as described in that section*.

§ 6.2-2107.1. Recordkeeping requirements.

A. As used in this section, a customer's "identification document" means any of the following:

1. A state-issued driver's license or identification card;
2. A U.S. government *permanent* resident ~~alien~~ identification card;
3. A passport;
4. A U.S. military identification card;
5. A Non-U.S. government identification card;
6. A Mexican Matricula identification card; or
7. Other government identification card.

B. A registrant shall not cash an item for a customer in the course of conducting its business unless the registrant:

1. Makes a copy of both sides of the item or maintains a record of the following information that is available from the item:

- a. ABA number;
- b. Account number;
- c. Check number;
- d. Check type;
- e. Date of check; and
- f. Check amount; and

2. Makes a copy of an identification document that is presented by the customer to the registrant at the time the customer presents the item for cashing or maintains a record of the following information that is available from the identification:

- a. Name;
- b. Address;
- c. Date of birth;
- d. Type of identification;
- e. Identification number; and
- f. Identification expiration date.

C. A registrant shall maintain the information required by subsection B and a record of the time and date of the transaction. Such materials shall be maintained for a period of not less than six months following the date an item is cashed.

D. The provisions of this section shall not apply to any registrant that is principally engaged in the bona fide retail sale of goods or services.

§ 13.1-753. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in this Commonwealth as required by law; (iii) has failed to file any document required by this chapter to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

§ 13.1-769. Involuntary revocation of certificate of authority.

A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that such foreign corporation:

1. Has continued to exceed the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission;
4. No longer exists under the laws of the jurisdiction of its formation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*.

A certificate of authority revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

B. A foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering an order revoking the certificate of authority of a foreign corporation under subsection A, the Commission shall issue a rule against the foreign corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission as an agent of the foreign corporation for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ 13.1-915. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in the Commonwealth as required by law; (iii) has failed to file any document required by this Act to be filed with the Commission; or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*. Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907. A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.

B. Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

§ 13.1-931. Involuntary revocation of certificate of authority.

A. The certificate of authority to transact business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this Act to be filed with the Commission;
4. No longer exists under the laws of the state or country of its incorporation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reinstatement for a period

of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ 13.1-1050.3. Involuntary cancellation of limited liability company existence.

A. The existence of a limited liability company may be canceled involuntarily by order of the Commission when it finds that the limited liability company has:

1. Continued to exceed or abuse the authority conferred upon it by law;
2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Failed to file any document required by this chapter to be filed with the Commission; or

4. Been convicted for a violation of 8 U.S.C. § ~~1324a~~ (f) *1324a(f)*, as amended, for actions of its members or managers constituting a pattern or practice of ~~employing unauthorized aliens unlawful employment~~ in the Commonwealth *as described in that section*.

B. Before entering any such order, the Commission shall issue a rule against the limited liability company giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its members or interest holders according to their respective rights and interests.

D. Any limited liability company convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited liability company whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

§ 13.1-1056.2. Involuntary cancellation of certificate of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign limited liability company may be canceled involuntarily by order of the Commission when it finds that the foreign limited liability company:

1. Has continued to exceed or abuse the authority conferred upon it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or other jurisdiction of its organization; or

5. Has been convicted for a violation of 8 U.S.C. § ~~1324a~~ (f) *1324a(f)*, as amended, for actions of its members or managers constituting a pattern or practice of ~~employing unauthorized aliens unlawful employment~~ in the Commonwealth *as described in that section*.

B. Before entering any such order the Commission shall issue a rule against the foreign limited liability company giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited liability company to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited liability company's certificate of registration

appoints the clerk of the Commission the foreign limited liability company's agent for service of process in any proceeding based on a cause of action arising during the time the foreign limited liability company was registered to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited liability company and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign limited liability company's certificate of registration does not terminate the authority of the registered agent of the foreign limited liability company.

F. Any foreign limited liability company convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

§ 13.1-1238.2. Involuntary cancellation of business trust existence.

A. The existence of a business trust may be canceled involuntarily by order of the Commission when it finds that the business trust has:

1. Continued to exceed or abuse the authority conferred upon it by law;

2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Failed to file any document required by this chapter to be filed with the Commission; or

4. Been convicted for a violation of 8 U.S.C. § ~~1324a~~ (~~f~~) *1324a(f)*, as amended, for actions of its trustees or beneficial owners authorized to act on the behalf of a business trust constituting a pattern or practice of ~~employing unauthorized aliens unlawful employment~~ in the Commonwealth *as described in that section*.

B. Before entering any such order, the Commission shall issue a rule against the business trust giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

D. Any business trust convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A business trust whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

§ 13.1-1246.2. Involuntary cancellation of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign business trust may be canceled involuntarily by order of the Commission when it finds that the foreign business trust:

1. Has continued to exceed or abuse the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or other jurisdiction of its formation; or

5. Has been convicted for a violation of 8 U.S.C. § ~~1324a~~ (~~f~~) *1324a(f)*, as amended, for actions of its trustees or beneficial owners authorized to act on the behalf of a foreign business trust constituting a pattern or practice of ~~employing unauthorized aliens unlawful employment~~ in the Commonwealth *as described in that section*.

B. Before entering any such order, the Commission shall issue a rule against the foreign business trust giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign business trust to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign business trust's certificate of registration appoints the clerk of the Commission the foreign business trust's agent for service of process in any proceeding based on a cause of action arising during the time the foreign business trust was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign business trust and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign business trust's certificate of registration does not terminate the authority

of the registered agent of the foreign business trust.

F. Any foreign business trust convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:6, 18.2-308.1:7, or 18.2-308.1:8 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application.

10. An ~~alien other than an alien~~ individual who is not a citizen or national of the United States and is not otherwise lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been

discharged from the Armed Forces of the United States, received an honorable discharge.

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer firearms; exemptions; penalties.

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, or § 18.2-308.1:6, 18.2-308.1:7, 18.2-308.1:8, 18.2-308.2, or 18.2-308.2:01, or is an ~~an~~ *illegal alien illegally present in the United States*, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal

Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § 18.2-308.2:2.

"Transfer" means any act performed with intent to sell, rent, barter, or trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

§ 19.2-81.6. Authority of law-enforcement officers to arrest individuals illegally present in the United States.

All law-enforcement officers enumerated in § 19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law-enforcement officer enumerated in § 19.2-81 may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is ~~an alien~~ illegally present in the United States; and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to § 19.2-82.

§ 19.2-294.2. Procedure when noncitizens convicted of certain felonies; duties of probation and parole officer.

A. Whenever a person is (i) convicted in a circuit court of any felony and (ii) referred to a probation or parole officer for a report pursuant to § 19.2-299, or for probation supervision, the probation or parole officer shall inquire as to the citizenship of such person. If upon inquiry it is determined that the person may *not* be ~~an alien~~ *a citizen or national of the United States* based upon his failure to produce evidence of United States citizenship *or status as a United States national*, the probation or parole officer shall report this determination to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

B. The inquiry required by this section need not be made if it is apparent that a report on ~~alien~~ *citizenship* status has previously been made to the Central Criminal Records Exchange pursuant to this

section.

C. It shall be the responsibility of the Central Criminal Records Exchange of the Department of State Police to review arrest reports submitted by law-enforcement agencies and reports of suspected alien status citizenship status inquiries made by probation or parole officers, and to report within sixty 60 days of final disposition to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement the identity of all convicted offenders suspected of being an alien believed to not be citizens or nationals of the United States.

§ 22.1-287. Limitations on access to records.

A. No teacher, principal or employee of any public school nor any school board member shall permit access to any records concerning any particular pupil enrolled in the school in any class to any person except under judicial process unless the person is one of the following:

1. Either parent of such pupil or such pupil; provided that a school board may require that such pupil, if he be less than 18 years of age, as a condition precedent to access to such records, furnish written consent of his or her parent for such access;

2. A person designated in writing by such pupil if the pupil is 18 years of age or older or by either parent of such pupil if the pupil is less than 18 years of age;

3. The principal, or someone designated by him, of a school where the pupil attends, has attended, or intends to enroll;

4. The current teachers of such pupil;

5. State or local law-enforcement or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his duties;

6. The Superintendent of Public Instruction, a member of his staff, the division superintendent of schools where the pupil attends, has attended, or intends to enroll or a member of his staff;

7. An officer or employee of a county or city agency responsible for protective services to children, as to a pupil referred to that agency as a minor requiring investigation or supervision by that agency.

B. A parent or pupil entitled to see the records pursuant to subdivision A 1 shall have access to all records relating to such pupil maintained by the school except as otherwise provided by law and need only appear in person during regular hours of the school day and request to see such records. No material concerning such pupil shall be edited or withheld except as otherwise provided by law, and the parent or pupil shall be entitled to read such material personally.

C. The giving of information by school personnel concerning participation in athletics and other school activities, the winning of scholastic or other honors and awards, and other like information shall be governed by the provisions of § 22.1-287.1.

D. Notwithstanding the restrictions imposed by this section:

1. A division superintendent of schools may, in his discretion, provide information to the staff of an institution of higher education or educational research and development organization or laboratory if such information is necessary to a research project or study conducted, sponsored, or approved by the institution of higher education or educational research and development organization or laboratory and if no pupil will be identified by name in the information provided for research;

2. The name and address of a pupil, the record of a pupil's daily attendance, a pupil's scholastic record in the form of grades received in school subjects, the names of a pupil's parents, a pupil's date and place of birth, and the names and addresses of other schools a pupil has attended may be released to an officer or employee of the United States government seeking this information in the course of his duties when the pupil is a veteran of military service with the United States, an orphan or dependent of such veteran, or an alien individual who is not a citizen or national of the United States;

3. The record of a pupil's daily attendance shall be open for inspection and reproduction to an employee of a local department of social services who needs the record to determine the eligibility of the pupil's family for public assistance and social services;

4. The principal or his designee may disclose identifying information from a pupil's scholastic record for the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication. In addition to those agencies or personnel identified in subdivisions A 5 and 7, the principal or his designee may disclose identifying information from a pupil's scholastic record to attorneys for the Commonwealth, court services units, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice and to the staff of such agencies. Prior to disclosure of any such scholastic records, the persons to whom the records are to be disclosed shall certify in writing to the principal or his designee that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the pupil or by such pupil if the pupil is 18 years of age or older.

§ 23.1-503. Determination of domicile; rules; presumptions.

667 A. Students shall not ordinarily establish domicile by the performance of acts that are auxiliary to
 668 fulfilling educational objectives or are required or routinely performed by temporary residents of the
 669 Commonwealth. Students shall not establish domicile by mere physical presence or residence primarily
 670 for educational purposes.

671 B. A married individual may establish domicile in the same manner as an unmarried individual.

672 C. A nonmilitary student whose parent or spouse is a member of the Armed Forces of the United
 673 States may establish domicile in the same manner as any other student.

674 D. Any ~~alien~~ *noncitizen* holding an immigration visa or classified as a political refugee may establish
 675 domicile in the same manner as any other student. However, absent congressional intent to the contrary,
 676 any individual holding a student visa or another temporary visa does not have the capacity to intend to
 677 remain in the Commonwealth indefinitely and is therefore ineligible to establish domicile and receive
 678 in-state tuition charges.

679 E. The domicile of a dependent student shall be rebuttably presumed to be the domicile of the parent
 680 or legal guardian (i) claiming him as an exemption on federal or state income tax returns currently and
 681 for the tax year prior to the date of the alleged entitlement or (ii) providing him with substantial
 682 financial support. The spouse of an active duty military service member, if such spouse has established
 683 domicile and claimed the dependent student on federal or state income tax returns, is not subject to
 684 minimum income tests or requirements.

685 F. The domicile of an unemancipated minor or a dependent student 18 years old or older may be the
 686 domicile of either the parent with whom he resides, the parent who claims the student as a dependent
 687 for federal or Virginia income tax purposes for the tax year prior to the date of the alleged entitlement
 688 and is currently so claiming the student, or the parent who provides the student with substantial financial
 689 support. If there is no surviving parent or the whereabouts of the parents are unknown, then the
 690 domicile of an unemancipated minor shall be the domicile of the legal guardian of such unemancipated
 691 minor unless circumstances indicate that such guardianship was created primarily for the purpose of
 692 establishing domicile.

693 G. Continuously enrolled non-Virginia students shall be presumed to be in the Commonwealth for
 694 educational purposes unless they rebut such presumption with clear and convincing evidence of
 695 domicile.

696 H. A non-Virginia student is not eligible for reclassification as a Virginia student unless he applies
 697 for and is approved for such reclassification. Any such reclassification shall only be granted
 698 prospectively from the date such application is received.

699 I. A student who knowingly provides erroneous information in an attempt to evade payment of
 700 out-of-state tuition charges shall be charged out-of-state tuition for each term, semester, or quarter
 701 attended and may be subject to dismissal from the institution. All disputes relating to the veracity of
 702 information provided to establish domicile in the Commonwealth are appealable as set forth in
 703 § 23.1-510.

704 J. No student shall be deemed ineligible to establish domicile and receive in-state tuition charges
 705 solely on the basis of the immigration status of his parent.

706 **§ 32.1-343. Definitions.**

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

708 "Board" means the Board of Medical Assistance Services.

709 "Director" means the Director of the Department of Medical Assistance Services.

710 "Indigent person" means a person who is a bona fide resident of the county or city, whether gainfully
 711 employed or not and who, either by himself or by those upon whom he is dependent, is unable to pay
 712 for required hospitalization or treatment. Residence shall not be established for the purpose of obtaining
 713 the benefits of this chapter. Migrant workers and ~~aliens~~ *persons* living in the United States illegally shall
 714 not be considered bona fide residents of the county or city for purposes of the State/Local
 715 Hospitalization Program.

716 **§ 38.2-6500. Definitions.**

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

718 "American Health Benefit Exchange" means the program established as a component of the Exchange
 719 pursuant to this chapter that is designed to facilitate the purchase of qualified health plans or qualified
 720 dental plans by qualified individuals.

721 "Bureau" means the Bureau of Insurance, a division within the Commission through which it
 722 administers insurance law.

723 "Certified application counselor" means individuals certified by the Exchange to perform the duties
 724 described in 45 C.F.R. § 155.255(c).

725 "Commission" means the State Corporation Commission.

726 "Committee" means the Advisory Committee established pursuant to § 38.2-6503.

727 "Director" means the Director of the Division appointed by the Commission pursuant to § 38.2-6502.

"Division" means the Health Benefit Exchange Division, a division within the Commission through which it administers the Exchange.

"Eligible employee" means an individual employed by a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP exchange.

"Eligible entity" means the Bureau, the Department of Medical Assistance Services, or a qualified vendor that has demonstrated experience on a statewide or regional basis in individual and small group health insurance markets and in benefits coverage; however, a health carrier or an affiliate of a health carrier is not an eligible entity.

"Essential health benefits package" means the scope of covered benefits and associated limits of a health benefit plan that (i) provides benefits pursuant to § 38.2-3451; (ii) provides the benefits in the manner described in 45 C.F.R. § 156.115; (iii) limits cost-sharing for such coverage as described in 45 C.F.R. § 156.130; and (iv) subject to offering catastrophic plans as described in § 1302(e) of the Federal Act, provides distinct levels of coverage as described in 45 C.F.R. § 156.140.

"Exchange" means, as the context requires, either (i) the Division or (ii) the Virginia Health Benefit Exchange established pursuant to the provisions of this chapter and in accordance with § 1311(b) of the Federal Act, through which qualified health plans and qualified dental plans are made available to qualified individuals through the American Health Benefit Exchange and to qualified employers through the SHOP exchange. "Exchange," when referring to the Virginia Health Benefit Exchange, collectively refers to both the American Health Benefit Exchange and the SHOP exchange.

"FAMIS" means the Family Access to Medical Insurance Security Plan, including the FAMIS Plus program, established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1.

"Federal Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P.L. 111-152, and as it may further be amended, and regulations issued thereunder.

"Health benefit plan" or "plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term does not include coverage only for accident or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for onsite medical clinics; or other similar insurance coverage, specified in federal regulations issued pursuant to the Federal Act, under which benefits for medical care are secondary or incidental to other insurance benefits. The term does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar limited benefits specified in federal regulations issued pursuant to the Federal Act. The term does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance; there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness, for hospital indemnity, or other fixed indemnity insurance. The term does not include the following if offered as a separate policy, certificate, or contract of insurance: Medicare supplemental health insurance as defined under § 1882(g)(1) of the U.S. Social Security Act; coverage supplemental to the coverage provided under 10 U.S.C. § 1071 et seq. (TRICARE); or similar supplemental coverage provided under a group health plan.

"Health carrier" or "carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the Commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, a dental plan organization, a dental services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Insurance agent" has the same meaning as provided in § 38.2-1800.

"Minimum essential coverage" means coverage defined in 45 C.F.R. § 156.600.

"Navigator" means an individual or entity that is registered pursuant to § 38.2-3457.

"PHSA" means the federal Public Health Service Act, Chapter 6A of Title 42 of the United States Code, as amended.

"Qualified dental plan" means a limited scope dental plan that has been certified in accordance with § 38.2-6506.

"Qualified employer" means a small employer that elects to make all of its full-time employees eligible for one or more qualified health plans or qualified dental plans in the small group market

offered through the SHOP exchange and, at the employer's option, some or all of its part-time employees, provided that the employer (i) has its principal place of business in the Commonwealth and elects to provide coverage through the SHOP exchange to all of its eligible employees, wherever employed, or (ii) elects to provide coverage through the SHOP exchange to all of its eligible employees who are principally employed in the Commonwealth.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(c) of the Federal Act and § 38.2-6506.

"Qualified individual" means an individual, including a minor, who (i) is seeking to enroll in a qualified health plan or qualified dental plan offered to individuals through the Exchange; (ii) resides in the Commonwealth; (iii) is not incarcerated at the time of enrollment, other than incarceration pending the disposition of charges; and (iv) is, and is reasonably expected to be, for the entire period for which enrollment is sought, a citizen or a national of the United States or an ~~alien~~ *individual who is otherwise* lawfully present in the United States.

"Secretary" means the Secretary of the U.S. Department of Health and Human Services.

"SHOP exchange" means the Small Business Health Options Program, established as a component of the Exchange pursuant to this chapter, through which a qualified employer can provide its eligible employees and their dependents with access to one or more qualified health plans or qualified dental plans.

"Small employer" means an employer that employed an average of not more than 50 employees during the preceding calendar year. For the purposes of this definition: (a) all persons treated as a single employer under subsection (b), (c), (m), or (o) of 26 U.S.C. § 414 shall be treated as a single employer; (b) an employer and any predecessor employer shall be treated as a single employer; and (c) all employees shall be counted, including part-time employees and employees who are not eligible for health insurance coverage through the employer. If an employer was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer shall be based on the average number of employees reasonably expected to be employed by the employer on business days in the current calendar year. An employer that makes enrollment in qualified health plans or qualified dental plans available to its eligible employees through the SHOP exchange and that no longer meets the definition of a small employer because of an increase in the number of its employees shall continue to be treated as a small employer for purposes of this chapter as long as that employer continuously makes enrollment through the SHOP exchange available to its eligible employees.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan maintained by a small employer.

"State-mandated health benefit" means coverage required under this title or other laws of the Commonwealth to be provided in a policy of accident and sickness insurance, an accident and sickness subscription contract, or a health maintenance organization health care plan that includes coverage for specific health care services or benefits.

"State Medicaid Program" means the Commonwealth's Medicaid program under Title XIX of the Social Security Act, as amended from time to time.

§ 40.1-11.1. Employment of persons not eligible for employment in the United States.

It shall be unlawful and constitute a Class 1 misdemeanor for any employer or any person acting as an agent for an employer, or any person who, for a fee, refers ~~an alien~~ *any individual who is not a citizen or national of the United States* and who cannot provide documents indicating that he or she is legally eligible for employment in the United States for employment to an employer, or an officer, agent, or representative of a labor organization to knowingly employ, continue to employ, or refer for employment any ~~alien~~ *individual who is not a citizen or national of the United States* and who cannot provide documents indicating that he or she is legally eligible for employment in the United States.

Permits issued by the United States Department of Justice authorizing an ~~alien~~ *individual who is not a citizen or national of the United States* to work in the United States shall constitute proof of eligibility for employment.

All employment application forms used by State and local governments and privately owned businesses operating in the Commonwealth on and after January 1, 1978, shall ask prospective employees if they are legally eligible for employment in the United States.

The provisions of this section shall not be deemed to require any employer to use employment application forms.

§ 46.2-328.1. Licenses, permits, and special identification cards to be issued only to United States citizens, legal permanent residents, or holders of valid unexpired nonimmigrant visas; exceptions; renewal, duplication, or reissuance.

A. Notwithstanding any other provision of this title, except as provided in subsection G of § 46.2-345, the Department shall not issue an original license, permit, or special identification card to

any applicant who has not presented to the Department, with the application, valid documentary evidence that the applicant is either (i) a citizen of the United States, (ii) a legal permanent resident of the United States, (iii) a *person with conditional resident alien of status* in the United States, (iv) an approved applicant for asylum in the United States, (v) an entrant into the United States in refugee status, or (vi) a citizen of the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, collectively known as the Freely Associated States.

B. Notwithstanding the provisions of subsection A and the provisions of §§ 46.2-330 and 46.2-345, an applicant who presents in person valid documentary evidence that a federal court or federal agency having jurisdiction over immigration has authorized the applicant to be in the United States or an applicant for a REAL ID credential who provides evidence of temporary lawful status in the United States as required pursuant to the REAL ID Act of 2005, as amended, and its implementing regulations may be issued a limited-duration license, permit, or special identification card. Such limited-duration license, permit, or special identification card shall be valid only during the period of time of the applicant's authorized stay in the United States or if there is no definite end to the period of authorized stay a period of one year. No license, permit, or special identification card shall be issued if an applicant's authorized stay in the United States is less than 30 days from the date of application. Any limited-duration license, permit, or special identification card issued pursuant to this subsection shall clearly indicate that it is valid for a limited period and shall state the date that it expires. Such a limited-duration license, permit, or special identification card may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the limited-duration license, permit, or special identification has been extended by a federal court or federal agency having jurisdiction over immigration.

C. Any license, permit, or special identification card for which an application has been made for renewal, duplication, or reissuance shall be presumed to have been issued in accordance with the provisions of subsection A, provided that, at the time the application is made, (i) the license, permit, or special identification card has not expired or been cancelled, suspended, or revoked or (ii) the license, permit, or special identification card has been canceled or suspended as a result of the applicant having been placed under medical review by the Department pursuant to § 46.2-322. The requirements of subsection A shall apply, however, to a renewal, duplication, or reissuance if the Department is notified by a local, state, or federal government agency that the individual seeking such renewal, duplication, or reissuance is neither a citizen of the United States nor legally in the United States.

D. The Department shall cancel any license, permit, or special identification card that it has issued to an individual if it is notified by a federal government agency that the individual is neither a citizen of the United States nor legally present in the United States.

E. For any applicant who presents a document pursuant to this section proving legal presence other than citizenship, the Department shall record and provide to the State Board of Elections monthly the applicant's document number, if any, issued by an agency or court of the United States government.

§ 46.2-341.12. (Contingent expiration date) Application for commercial driver's license or commercial learner's permit.

A. Every application to the Department for a commercial driver's license or commercial learner's permit shall be made upon a form approved and furnished by the Department, and the applicant shall write his usual signature in ink in the space provided. The applicant shall provide the following information:

1. Full legal name;
2. Current mailing and residential addresses;
3. Physical description including sex, height, weight, and eye and hair color;
4. Year, month, and date of birth;
5. Social security number;
6. Domicile or, if not domiciled in the Commonwealth, proof of status as a member of the active duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard Auxiliary pursuant to 49 U.S.C. § 31311(a)(12); and
7. Any other information required on the application form.

Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating the applicant's sex on the commercial driver's license or commercial learner's permit application form.

The applicant's social security number shall be provided to the Commercial Driver's License Information System as required by 49 C.F.R. § 383.153.

B. Every applicant for a commercial driver's license or commercial learner's permit shall also submit to the Department the following:

1. A consent to release driving record information;
2. Certifications that:
 - a. He either meets the federal qualification requirements of 49 C.F.R. Parts 383 and 391, or he is

911 exempt from or is not subject to such federal requirements;
912 b. He either meets the state qualification requirements established pursuant to § 52-8.4, or he is
913 exempt from or is not subject to such requirements;
914 c. The motor vehicle in which the applicant takes the skills test is representative of the class and, if
915 applicable, the type of motor vehicle for which the applicant seeks to be licensed;
916 d. He is not subject to any disqualification, suspension, revocation or cancellation of his driving
917 privileges;
918 e. He does not have more than one driver's license;
919 3. Other certifications required by the Department;
920 4. Any evidence required by the Department to establish proof of identity, citizenship or lawful
921 permanent residency, domicile, and social security number notwithstanding the provisions of
922 § 46.2-328.1 and pursuant to 49 C.F.R. Part 383;
923 5. A statement indicating whether (i) the applicant has previously been licensed to drive any type of
924 motor vehicle during the previous 10 years and, if so, all states that licensed the applicant and the dates
925 he was licensed, and (ii) whether or not he has ever been disqualified, or his license suspended, revoked
926 or canceled and, if so, the date of and reason therefor; and
927 6. An unexpired employment authorization document (EAD) issued by the U.S. Citizenship and
928 Immigration Services (USCIS) or an unexpired foreign passport accompanied by an approved Form I-94
929 documenting the applicant's most recent admittance into the United States for persons applying for a
930 nondomiciled commercial driver's license or nondomiciled commercial learner's permit.
931 C. Every application for a commercial driver's license shall include a photograph of the applicant
932 supplied under arrangements made therefor by the Department in accordance with § 46.2-323.
933 D. The Department shall disqualify any commercial driver for a period of one year when the records
934 of the Department clearly show to the satisfaction of the Commissioner that such person has made a
935 material false statement on any application or certification made for a commercial driver's license or
936 commercial learner's permit. The Department shall take such action within 30 days after discovering
937 such falsification.
938 E. (Contingent expiration date) The Department shall review the driving record of any person who
939 applies for a Virginia commercial driver's license or commercial learner's permit, for the renewal or
940 reinstatement of such license or permit or for an additional commercial classification or endorsement,
941 including the driving record from all jurisdictions where, during the previous 10 years, the applicant was
942 licensed to drive any type of motor vehicle. Such review shall include checking the photograph on
943 record whenever the applicant or holder appears in person to renew, upgrade, transfer, reinstate, or
944 obtain a duplicate commercial driver's license or to renew, upgrade, reinstate, or obtain a duplicate
945 commercial learner's permit. If appropriate, the Department shall incorporate information from such other
946 jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the
947 applicant's driving record confirming that such review has been completed and the date it was
948 completed. The Department's review shall include research through the Commercial Driver License
949 Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National
950 Driver Register Problem Driver Pointer System in addition to the driver record maintained by the
951 applicant's previous jurisdictions of licensure. This research shall be completed prior to the issuance,
952 renewal, transfer, or reinstatement of a commercial driver's license or additional commercial
953 classification or endorsement.
954 The Department shall verify the name, date of birth, and social security number provided by the
955 applicant with the information on file with the Social Security Administration for initial issuance of a
956 commercial learner's permit or transfer of a commercial driver's license from another state. The
957 Department shall make a notation in the driver's record confirming that the necessary verification has
958 been completed and noting the date it was done. The Department shall also make a notation confirming
959 that proof of citizenship or lawful permanent residency has been presented and the date it was done.
960 E. (Contingent effective date) The Department shall review the driving record of any person who
961 applies for a Virginia commercial driver's license or commercial learner's permit, for the renewal or
962 reinstatement of such license or permit or for an additional commercial classification or endorsement,
963 including the driving record from all jurisdictions where, during the previous 10 years, the applicant was
964 licensed to drive any type of motor vehicle. Such review shall include checking the photograph on
965 record whenever the applicant or holder appears in person to renew, upgrade, transfer, reinstate, or
966 obtain a duplicate commercial driver's license or to renew, upgrade, reinstate, or obtain a duplicate
967 commercial learner's permit. If appropriate, the Department shall incorporate information from such other
968 jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the
969 applicant's driving record confirming that such review has been completed and the date it was
970 completed. The Department's review shall include (i) research through the Commercial Driver License
971 Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National

Driver Register Problem Driver Pointer System in addition to the driver record maintained by the applicant's previous jurisdictions of licensure and (ii) requesting information from the Drug and Alcohol Clearinghouse in accordance with 49 C.F.R. § 382.725. This research shall be completed prior to the issuance, renewal, transfer, or reinstatement of a commercial driver's license or additional commercial classification or endorsement.

The Department shall verify the name, date of birth, and social security number provided by the applicant with the information on file with the Social Security Administration for initial issuance of a commercial learner's permit or transfer of a commercial driver's license from another state. The Department shall make a notation in the driver's record confirming that the necessary verification has been completed and noting the date it was done. The Department shall also make a notation confirming that proof of citizenship or lawful permanent residency has been presented and the date it was done.

F. Every new applicant for a commercial driver's license or commercial learner's permit, including any person applying for a commercial driver's license or permit after revocation of his driving privileges, who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an appropriate medical examiner's certificate, the Department shall post a certification status of "certified" on the record of the driver on the Commercial Driver's License Information System. Any new applicant for a commercial driver's license or commercial learner's permit who fails to comply with the requirements of this subsection shall be denied the issuance of a commercial driver's license or commercial learner's permit by the Department.

G. Every existing holder of a commercial driver's license or commercial learner's permit who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an appropriate medical examiner's certificate, the Department shall post a certification status of "certified" and any other necessary information on the record of the driver on the Commercial Driver's License Information System. If an existing holder of a commercial driver's license fails to provide the Department with a medical certificate as required by this subsection, the Department shall post a certification status of "noncertified" on the record of the driver on the Commercial Driver's License Information System and initiate a downgrade of his commercial driver's license as defined in 49 C.F.R. § 383.5.

H. Any person who provides a medical certificate to the Department pursuant to the requirements of subsections F and G shall keep the medical certificate information current and shall notify the Department of any change in the status of the medical certificate. If the Department determines that the medical certificate is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. § 383.5.

I. If the Department receives notice that the holder of a commercial driver's license has been issued a medical variance as defined in 49 C.F.R. § 390.5, the Department shall indicate the existence of such medical variance on the commercial driver's license document of the driver and on the record of the driver on the Commercial Driver's License Information System using the restriction code "V."

J. Any holder of a commercial driver's license who has been issued a medical variance shall keep the medical variance information current and shall notify the Department of any change in the status of the medical variance. If the Department determines that the medical variance is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. § 383.5.

K. Any applicant applying for a hazardous materials endorsement must comply with Transportation Security Administration requirements in 49 C.F.R. Part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his *registration number assigned by U.S. Citizenship and Immigration Services (USCIS)* ~~alien registration number~~.

L. Notwithstanding the provisions of § 46.2-208, the Department may release to the FMCSA medical information relating to the issuance of a commercial driver's license or a commercial learner's permit collected by the Department pursuant to the provisions of subsections F, G, H, I, and J.

§ 46.2-341.12. (Contingent effective date) Application for commercial driver's license or commercial learner's permit.

A. No entry-level driver shall be eligible to (i) apply for a Virginia Class A or Class B commercial driver's license for the first time, (ii) upgrade to a Class A or Class B commercial driver's license for the first time, or (iii) apply for a hazardous materials, passenger, or school bus endorsement for the first time, unless he has completed an entry-level driver training course related to the license, classification, or endorsement he is applying for and the training is provided by a training provider. An individual is not required to complete an entry-level driver training course related to the license, classification, or endorsement he is applying for if he is exempted from such requirements under 49 C.F.R. § 380.603.

1033 B. Every application to the Department for a commercial driver's license or commercial learner's
 1034 permit shall be made upon a form approved and furnished by the Department, and the applicant shall
 1035 write his usual signature in ink in the space provided. The applicant shall provide the following
 1036 information:

- 1037 1. Full legal name;
- 1038 2. Current mailing and residential addresses;
- 1039 3. Physical description including sex, height, weight, and eye and hair color;
- 1040 4. Year, month, and date of birth;
- 1041 5. Social security number;

1042 6. Domicile or, if not domiciled in the Commonwealth, proof of status as a member of the active
 1043 duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard
 1044 Auxiliary pursuant to 49 U.S.C. § 31311(a)(12); and

1045 7. Any other information required on the application form.

1046 Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating
 1047 the applicant's sex on the commercial driver's license or commercial learner's permit application form.

1048 The applicant's social security number shall be provided to the Commercial Driver's License
 1049 Information System as required by 49 C.F.R. § 383.153.

1050 C. Every applicant for a commercial driver's license or commercial learner's permit shall also submit
 1051 to the Department the following:

- 1052 1. A consent to release driving record information;
- 1053 2. Certifications that:
 - 1054 a. He either meets the federal qualification requirements of 49 C.F.R. Parts 383 and 391, or he is
 - 1055 exempt from or is not subject to such federal requirements;
 - 1056 b. He either meets the state qualification requirements established pursuant to § 52-8.4, or he is
 - 1057 exempt from or is not subject to such requirements;
 - 1058 c. The motor vehicle in which the applicant takes the skills test is representative of the class and, if
 - 1059 applicable, the type of motor vehicle for which the applicant seeks to be licensed;
 - 1060 d. He is not subject to any disqualification, suspension, revocation or cancellation of his driving
 - 1061 privileges;

1062 e. He does not have more than one driver's license;

1063 3. Other certifications required by the Department;

1064 4. Any evidence required by the Department to establish proof of identity, citizenship or lawful
 1065 permanent residency, domicile, and social security number notwithstanding the provisions of
 1066 § 46.2-328.1 and pursuant to 49 C.F.R. Part 383;

1067 5. A statement indicating whether (i) the applicant has previously been licensed to drive any type of
 1068 motor vehicle during the previous 10 years and, if so, all states that licensed the applicant and the dates
 1069 he was licensed, and (ii) whether or not he has ever been disqualified, or his license suspended, revoked
 1070 or canceled and, if so, the date of and reason therefor; and

1071 6. An unexpired employment authorization document (EAD) issued by the U.S. Citizenship and
 1072 Immigration Services (USCIS) or an unexpired foreign passport accompanied by an approved Form I-94
 1073 documenting the applicant's most recent admittance into the United States for persons applying for a
 1074 nondomiciled commercial driver's license or nondomiciled commercial learner's permit.

1075 D. Every application for a commercial driver's license shall include a photograph of the applicant
 1076 supplied under arrangements made therefor by the Department in accordance with § 46.2-323.

1077 E. The Department shall disqualify any commercial driver for a period of one year when the records
 1078 of the Department clearly show to the satisfaction of the Commissioner that such person has made a
 1079 material false statement on any application or certification made for a commercial driver's license or
 1080 commercial learner's permit. The Department shall take such action within 30 days after discovering
 1081 such falsification.

1082 F. (Contingent expiration date) The Department shall review the driving record of any person who
 1083 applies for a Virginia commercial driver's license or commercial learner's permit, for the renewal or
 1084 reinstatement of such license or permit or for an additional commercial classification or endorsement,
 1085 including the driving record from all jurisdictions where, during the previous 10 years, the applicant was
 1086 licensed to drive any type of motor vehicle. Such review shall include checking the photograph on
 1087 record whenever the applicant or holder appears in person to renew, upgrade, transfer, reinstate, or
 1088 obtain a duplicate commercial driver's license or to renew, upgrade, reinstate, or obtain a duplicate
 1089 commercial learner's permit. If appropriate, the Department shall incorporate information from such other
 1090 jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the
 1091 applicant's driving record confirming that such review has been completed and the date it was
 1092 completed. The Department's review shall include research through the Commercial Driver License
 1093 Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National

Driver Register Problem Driver Pointer System in addition to the driver record maintained by the applicant's previous jurisdictions of licensure. This research shall be completed prior to the issuance, renewal, transfer, or reinstatement of a commercial driver's license or additional commercial classification or endorsement.

The Department shall verify the name, date of birth, and social security number provided by the applicant with the information on file with the Social Security Administration for initial issuance of a commercial learner's permit or transfer of a commercial driver's license from another state. The Department shall make a notation in the driver's record confirming that the necessary verification has been completed and noting the date it was done. The Department shall also make a notation confirming that proof of citizenship or lawful permanent residency has been presented and the date it was done.

F. (Contingent effective date) The Department shall review the driving record of any person who applies for a Virginia commercial driver's license or commercial learner's permit, for the renewal or reinstatement of such license or permit or for an additional commercial classification or endorsement, including the driving record from all jurisdictions where, during the previous 10 years, the applicant was licensed to drive any type of motor vehicle. Such review shall include checking the photograph on record whenever the applicant or holder appears in person to renew, upgrade, transfer, reinstate, or obtain a duplicate commercial driver's license or to renew, upgrade, reinstate, or obtain a duplicate commercial learner's permit. If appropriate, the Department shall incorporate information from such other jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the applicant's driving record confirming that such review has been completed and the date it was completed. The Department's review shall include (i) research through the Commercial Driver License Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National Driver Register Problem Driver Pointer System in addition to the driver record maintained by the applicant's previous jurisdictions of licensure and (ii) requesting information from the Drug and Alcohol Clearinghouse in accordance with 49 C.F.R. § 382.725. This research shall be completed prior to the issuance, renewal, transfer, or reinstatement of a commercial driver's license or additional commercial classification or endorsement.

The Department shall verify the name, date of birth, and social security number provided by the applicant with the information on file with the Social Security Administration for initial issuance of a commercial learner's permit or transfer of a commercial driver's license from another state. The Department shall make a notation in the driver's record confirming that the necessary verification has been completed and noting the date it was done. The Department shall also make a notation confirming that proof of citizenship or lawful permanent residency has been presented and the date it was done.

G. Every new applicant for a commercial driver's license or commercial learner's permit, including any person applying for a commercial driver's license or permit after revocation of his driving privileges, who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an appropriate medical examiner's certificate, the Department shall post a certification status of "certified" on the record of the driver on the Commercial Driver's License Information System. Any new applicant for a commercial driver's license or commercial learner's permit who fails to comply with the requirements of this subsection shall be denied the issuance of a commercial driver's license or commercial learner's permit by the Department.

H. Every existing holder of a commercial driver's license or commercial learner's permit who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an appropriate medical examiner's certificate, the Department shall post a certification status of "certified" and any other necessary information on the record of the driver on the Commercial Driver's License Information System. If an existing holder of a commercial driver's license fails to provide the Department with a medical certificate as required by this subsection, the Department shall post a certification status of "noncertified" on the record of the driver on the Commercial Driver's License Information System and initiate a downgrade of his commercial driver's license as defined in 49 C.F.R. § 383.5.

I. Any person who provides a medical certificate to the Department pursuant to the requirements of subsections G and H shall keep the medical certificate information current and shall notify the Department of any change in the status of the medical certificate. If the Department determines that the medical certificate is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. § 383.5.

J. If the Department receives notice that the holder of a commercial driver's license has been issued a medical variance as defined in 49 C.F.R. § 390.5, the Department shall indicate the existence of such medical variance on the commercial driver's license document of the driver and on the record of the

driver on the Commercial Driver's License Information System using the restriction code "V."

K. Any holder of a commercial driver's license who has been issued a medical variance shall keep the medical variance information current and shall notify the Department of any change in the status of the medical variance. If the Department determines that the medical variance is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. § 383.5.

L. Any applicant applying for a hazardous materials endorsement must comply with Transportation Security Administration requirements in 49 C.F.R. Part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his *registration number assigned by U.S. Citizenship and Immigration Services (USCIS)* ~~alien registration number~~.

M. Notwithstanding the provisions of § 46.2-208, the Department may release to the FMCSA medical information relating to the issuance of a commercial driver's license or a commercial learner's permit collected by the Department pursuant to the provisions of subsections F, G, H, I, and J.

§ 47.1-2. Definitions.

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

"Acknowledgment" means a notarial act in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

"Affirmation" means a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) makes a vow of truthfulness or fidelity on penalty of perjury.

"Commissioned notary public" means that the applicant has completed and submitted the registration forms along with the appropriate fee to the Secretary of the Commonwealth and the Secretary of the Commonwealth has determined that the applicant meets the qualifications to be a notary public and issues a notary commission and forwards same to the clerk of the circuit court, pursuant to this chapter.

"Copy certification" means a notarial act in which a notary (i) is presented with a document that is not a public record; (ii) copies or supervises the copying of the document using a photographic or electronic copying process; (iii) compares the document to the copy; and (iv) determines that the copy is accurate and complete.

"Credential analysis" means a process or service that independently affirms the veracity of a government-issued identity credential by reviewing public or proprietary data sources and meets the standards of the Secretary of the Commonwealth.

"Credible witness" means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to confirm that individual's identity.

"Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including a record as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

"Electronic notarial act" or "electronic notarization" means an official act by a notary under § 47.1-12 or as otherwise authorized by law that involves electronic documents.

"Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, and other required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular notarization. The "electronic notarial certificate" shall indicate whether the notarization was done in person or by remote online notarization.

"Electronic notary public" or "electronic notary" means a notary public who has been commissioned by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under § 47.1-7.

"Electronic notary seal" or "electronic seal" means information within a notarized electronic document that confirms the notary's name, jurisdiction, and commission expiration date and generally corresponds to data in notary seals used on paper documents.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

"Identity proofing" means a process or service that independently verifies an individual's identity in accordance with § 2.2-436.

"Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or 47.1-13 or as otherwise authorized by law.

"Notarial certificate" or "certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, notary registration number, and other required information concerning the date and place of the notarization and states the facts attested to or certified by the notary public in a particular notarization.

"Notary public" or "notary" means any person commissioned to perform official acts under the title, and includes an electronic notary except where expressly provided otherwise.

"Oath" shall include "affirmation."

"Official misconduct" means any violation of this title by a notary, whether committed knowingly, willfully, recklessly or negligently.

"Personal knowledge of identity" or "personally knows" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

"Principal" means (i) a person whose signature is notarized or (ii) a person, other than a credible witness, taking an oath or affirmation from the notary.

"Record of notarial acts" means a device for creating and preserving a chronological record of notarizations performed by a notary.

"Remote online notarization" means an electronic notarization under this chapter where the signer is not in the physical presence of the notary.

"Satisfactory evidence of identity" means identification of an individual based on (i) examination of one or more of the following unexpired documents bearing a photographic image of the individual's face and signature: a United States Passport Book, a United States Passport Card, a certificate of United States citizenship, a certificate of naturalization, a foreign passport, ~~an alien registration~~ *a permanent resident card* with photograph, a state issued driver's license or a state issued identification card or a United States military card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in clause (i). In the case of an individual who resides in an assisted living facility, as defined in § 63.2-100, or a nursing home, licensed by the State Department of Health pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or exempt from licensure pursuant to § 32.1-124, an expired United States Passport Book, expired United States Passport Card, expired foreign passport, or expired state issued driver's license or state issued identification card may also be used for identification of such individual, provided that the expiration of such document occurred within five years of the date of use for identification purposes pursuant to this title. In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video and audio conference technology, in accordance with the standards for electronic video and audio communications set out in subdivisions B 1, 2, and 3 of § 19.2-3.1, that permits the notary to communicate with and identify the principal at the time of the notarial act, provided that such identification is confirmed by (a) personal knowledge, (b) an oath or affirmation of a credible witness, or (c) at least two of the following: (1) credential analysis of an unexpired government-issued identification bearing a photograph of the principal's face and signature, (2) identity proofing by an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority, (3) another identity proofing method authorized in guidance documents, regulations, or standards adopted pursuant to § 2.2-436, or (4) a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof, including the specifications published by the Federal Chief Information Officers Council in "Personal Identity Verification Interoperability for Non-Federal Issuers."

"Seal" means a device for affixing on a paper document an image containing the notary's name and other information related to the notary's commission.

"Secretary" means the Secretary of the Commonwealth.

"State" includes any state, territory, or possession of the United States.

"Verification of fact" means a notarial act in which a notary reviews public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based.

§ 50-73.52:6. Involuntary cancellation of limited partnership existence.

A. The existence of a limited partnership may be canceled involuntarily by order of the Commission when it finds that the limited partnership has:

1. Continued to exceed or abuse the authority conferred on it by law;
2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Failed to file any document required by this chapter to be filed with the Commission; or
4. Been convicted for a violation of 8 U.S.C. § 1324a (f) *1324a(f)*, as amended, for actions of its partners constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited partnership whose existence has been canceled pursuant to this section shall pass automatically to its general partners as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited partnership; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its partners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its partners according to their respective rights and interests.

D. Any limited partnership convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited partnership whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.

§ 50-73.58:2. Involuntary cancellation of certificate of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign limited partnership may be canceled involuntarily by order of the Commission when it finds that the foreign limited partnership:

1. Has continued to exceed or abuse the authority conferred on it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission;
4. No longer exists under the laws of the state or other jurisdiction of its formation; or
5. Has been convicted for a violation of 8 U.S.C. § 1324a (f) *1324a(f)*, as amended, for actions of its partners constituting a pattern or practice of ~~employing unauthorized aliens~~ *unlawful employment* in the Commonwealth *as described in that section*.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited partnership to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited partnership's certificate of registration appoints the clerk of the Commission the limited partnership's agent for service of process in any proceeding based on a cause of action arising during the time the limited partnership was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited partnership and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign limited partnership's certificate of registration does not terminate the authority of the registered agent of the foreign limited partnership.

F. Any foreign limited partnership convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

CHAPTER 10.

COMMITMENT OF ALIENS NONCITIZENS.

§ 53.1-218. Duty of officer in charge to inquire as to citizenship; notice to federal immigration officer of commitment of noncitizen.

Whenever any person is committed to a correctional facility for the commission of a felony, the director, sheriff or other officer in charge of such facility shall inquire as to whether the person (i) was born in a country other than the United States and (ii) is a citizen of a country other than the United

States. The director, sheriff or other officer in charge of such facility shall make an immigration alien query to the Law Enforcement Support Center of the U.S. Immigration and Customs Enforcement for any person committed to the facility for the commission of a felony who (i) was born in a country other than the United States and (ii) is a citizen of a country other than the United States, or for whom the answer to clause (i) or (ii) is unknown.

In the case of a jail, the sheriff, or other officer in charge of such facility shall communicate the results of any immigration alien query that confirm that the person is illegally present in the United States to the Local Inmate Data System of the State Compensation Board. The State Compensation Board shall communicate, on a monthly basis, the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

In the case of a correctional facility of the Department of Corrections, the director or other officer in charge of such facility shall communicate the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

The information received by the Central Criminal Records Exchange concerning the person's immigration status shall be recorded in the person's criminal history record.

However, notification shall not be made to the Central Criminal Records Exchange if it is apparent that a report on ~~alien~~ *citizenship or immigration* status has previously been made to the Exchange pursuant to § 19.2-83.2 or 19.2-294.2.

§ 53.1-219. Duty of clerk to furnish copy of complaint, indictment, judgment and sentence.

Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any ~~alien~~ *person who is not a citizen or national of the United States* to any correctional facility for the commission of a felony, it shall be the duty of the clerk of such court to furnish without charge a certified copy, in duplicate, of the complaint, information or indictment and the judgment and sentence and any other records pertaining to the case of the convicted ~~alien~~ *person*.

§ 53.1-220.1. Transfer of prisoners convicted of designated illegal acts.

With the consent of the appropriate state authorities, ~~the U.S. Immigration and Naturalization Service Customs Enforcement~~ may, following notification under § 19.2-294.2, take physical custody of and responsibility for any ~~alien~~ *person who is not a citizen or national of the United States* who is convicted of any (i) felony offense involving murder, rape, robbery, burglary, larceny, extortion, or abduction, or (ii) illegal drug violation designated as a felony under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2. The director, sheriff, or other official in charge of the facility in which such ~~alien~~ *person* is incarcerated may enter into an agreement, which includes provisions relating to reimbursement, with ~~the U.S. Immigration and Naturalization Service Customs Enforcement~~ to retain custody or supervision of such ~~alien~~ *person* until he is deported or until other mutually satisfactory arrangements are made to transfer custody of such ~~alien~~ *person* to ~~the Service~~ *U.S. Immigration and Customs Enforcement*.

§ 53.1-220.2. Transfer of certain incarcerated persons to Immigration and Customs Enforcement.

The Director, sheriff, or other official in charge of the facility in which ~~an~~ *alien a person who is not a citizen or national of the United States* is incarcerated may, upon receipt of a detainer from U.S. Immigration and Customs Enforcement, transfer custody of ~~the alien~~ *such person* to U.S. Immigration and Customs Enforcement no more than five days prior to the date that he would otherwise be released from custody. Upon transfer of custody, notwithstanding any other provision of law, ~~the alien~~ *such person* shall receive credit for the number of days remaining before he would otherwise have been released.

§ 55.1-100. Noncitizens may acquire, hold, and transmit real estate; when reciprocity required.

Any ~~alien~~ *person*, not an enemy, *who is a noncitizen of the United States* may acquire by purchase or descent and hold real estate in the Commonwealth, and such real estate shall be transmitted in the same manner as real estate held by citizens. However, if, at the time of the transfer, a court of the Commonwealth determines that the laws of a foreign country or sovereignty effectively deny a Virginia resident, legatee, or distributee the benefit, use, or control of money or other property held in such foreign country or sovereignty, a judgment or order issued in the Commonwealth concerning the rights of a resident of that foreign country or sovereignty to the benefit, use, or control of money or property held in the Commonwealth may direct that the money or property be paid into the court for the benefit of the ~~alien~~ *noncitizen*. The money or property paid into court shall be paid out only upon order of the court or pursuant to the order or judgment of a court of competent jurisdiction. Any of the money or property remaining with the court upon expiration of three years from the decedent's death shall be paid out by the court as if the ~~alien~~ *noncitizen* had predeceased the decedent.

§ 58.1-904. Tax upon estates of nonresident or noncitizen decedents.

A. A tax in an amount computed as provided in this section is imposed upon the transfer of real property and tangible personal property having an actual situs in the Commonwealth of Virginia and upon intangible personal property physically present within the Commonwealth of every person who at the time of death was not a resident of the United States.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the decedent's gross estate taxable by the United States wherever situated.

B. ~~Resident aliens~~ *Lawful permanent residents or conditional residents* of the United States, or *persons with substantial presence in the United States*, shall be subject to the tax imposed by this chapter under § 58.1-903 when the decedent, at the time of death, was not a resident of Virginia but was a resident of the United States. A *lawful permanent resident alien or conditional resident of the United States, or person with substantial presence in the United States*, who, at the time of death, was a resident of Virginia and a resident of the United States shall be subject to the tax imposed by this chapter under § 58.1-902.

C. For purposes of this section, stock in a corporation organized under the laws of the Commonwealth shall be deemed physically present within the Commonwealth.

§ 60.2-214. Agricultural employment.

A. "Employment" includes service performed by an individual in agricultural labor as defined in § 60.2-201 when:

1. Such service is performed for a person who:
a. During any calendar quarter in either the current or the preceding calendar year paid wages of \$20,000 or more to individuals employed in agricultural labor, including labor performed by ~~an alien a noncitizen~~ referred to in subdivision 2 of this subsection; or

b. For some portion of a day in each of ~~twenty~~ 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by ~~an alien a noncitizen~~ referred to in subdivision 2 of this subsection, ~~ten~~ 10 or more individuals, regardless of whether they were employed at the same moment of time.

2. Such service is not performed in agricultural labor by an individual who is ~~an alien a noncitizen~~ admitted to the United States to perform service in agricultural labor pursuant to 8 U.S.C. § 214 (c) and 8 U.S.C. § 101 (a) (15) (H) of the Immigration and Nationality Act. Services performed and wages received by such ~~alien~~ workers after January 1, 1980, shall be counted in determining whether an employer is subject to the Virginia unemployment tax for his other farmworkers.

B. For the purposes of this section any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

1. Such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Workers Protection Act of 1983 (29 U.S.C. § 1801 et seq.) or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader, and

2. Such individual is not an employee of such other person within the meaning of subdivision A 1 of subsection A of § 60.2-212.

C. For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection B of this section then:

1. Such other person and not the crew leader shall be treated as the employer of such individual, and
2. Such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

D. For the purposes of this section, the term "crew leader" means an individual who:

1. Furnishes individuals to perform service in agricultural labor for any other person;
2. Pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and
3. Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

§ 60.2-617. Benefits denied to certain noncitizens.

A. Benefits shall not be paid on the basis of services performed by ~~an alien a person who is not a citizen or national of the United States~~ unless such individual was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently and lawfully residing in the United States under color of law at the time such services were performed. The provisions of this subsection shall include ~~aliens~~ persons who

were lawfully present in the United States as a result of the application of the provisions of § 1153 (a) (7) or § 1182 (d) (5) of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.). Additionally, any modifications to the provisions of § 3304 (a) (14) of the Federal Unemployment Tax Act (26 U.S.C. § 3301 et seq.) which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by *aliens persons who are not citizens or nationals of the United States* and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

B. Any data or information required of individuals claiming benefits to determine whether benefits are not payable to them because of their *alien citizenship* status shall be uniformly required from all applicants for benefits.

C. In the case of an individual whose claim for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his *alien citizenship* status shall be made except upon a preponderance of the evidence.

§ 64.2-203. Inheritance rights of certain individuals.

A. Except as otherwise provided by law, no person is barred from inheriting because such person or a person through whom he claims his inheritance is *not* or ~~has been an alien~~ *was not a citizen or national of the United States*.

B. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard and the Virginia Defense Force, registered members on duty or in training of the United States Civil Defense Corps of the Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of the Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer emergency medical services personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer who is an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 shall be deemed to be \$300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency

1521 Management shall be based upon the earnings of such persons from their primary employers.
 1522 "Award" means the grant or denial of benefits or other relief under this title or any rule adopted
 1523 pursuant thereto.
 1524 "Change in condition" means a change in physical condition of the employee as well as any change
 1525 in the conditions under which compensation was awarded, suspended, or terminated which would affect
 1526 the right to, amount of, or duration of compensation.
 1527 "Client company" means any person that enters into an agreement for professional employer services
 1528 with a professional employer organization.
 1529 "Coemployee" means an employee performing services pursuant to an agreement for professional
 1530 employer services between a client company and a professional employer organization.
 1531 "Commission" means the Virginia Workers' Compensation Commission as well as its former
 1532 designation as the Virginia Industrial Commission.
 1533 "Employee" means:
 1534 1. a. Every person, including ~~aliens~~ *noncitizens* and minors, in the service of another under any
 1535 contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, except
 1536 (i) one whose employment is not in the usual course of the trade, business, occupation or profession of
 1537 the employer or (ii) as otherwise provided in subdivision 2 of this definition.
 1538 b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or
 1539 instruction outside of regular working hours and off the job, so long as the training or instruction is
 1540 related to his employment and is authorized by his employer.
 1541 c. Members of the Virginia National Guard, whether on duty in a paid or unpaid status or when
 1542 performing voluntary service to their unit in a nonduty status at the request of their commander.
 1543 Income benefits for members of the National Guard shall be terminated when they are able to return
 1544 to their customary civilian employment or self-employment. If they are neither employed nor
 1545 self-employed, those benefits shall terminate when they are able to return to their military duties. If a
 1546 member of the National Guard who is fit to return to his customary civilian employment or
 1547 self-employment remains unable to perform his military duties and thereby suffers loss of military pay
 1548 which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit
 1549 training assembly or day of paid training which he is unable to attend.
 1550 d. Members of the Virginia Defense Force.
 1551 e. Registered members of the United States Civil Defense Corps of the Commonwealth, whether on
 1552 duty or in training.
 1553 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
 1554 Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile
 1555 and domestic relations district courts and general district courts; and (iii) secretaries and administrative
 1556 assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and
 1557 compensated as provided in the general appropriation act, who shall be deemed employees of the
 1558 Commonwealth.
 1559 g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal
 1560 corporation or political subdivision of the Commonwealth.
 1561 h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including
 1562 president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the
 1563 charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability
 1564 company elected or appointed in accordance with the articles of organization or operating agreement of
 1565 the limited liability company.
 1566 i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
 1567 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth,
 1568 clerks of circuit courts and their deputies, officers and employees, and electoral board members
 1569 appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities,
 1570 counties and towns in which their services are employed and by whom their salaries are paid or in
 1571 which their compensation is earnable. However, notwithstanding the foregoing provision of this
 1572 subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or
 1573 town in which their services are employed and by whom their salaries are paid or in which their
 1574 compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid
 1575 outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the
 1576 Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.
 1577 j. Members of the governing body of any county, city, or town in the Commonwealth, whenever
 1578 coverage under this title is extended to such members by resolution or ordinance duly adopted.
 1579 k. Volunteers, officers and employees of any commission or board of any authority created or
 1580 controlled by a local governing body, or any local agency or public service corporation owned, operated
 1581 or controlled by such local governing body, whenever coverage under this title is authorized by

resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or public institution of higher education in which the principal office of such volunteer fire company, volunteer emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or public institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer emergency medical services personnel, the fire companies or emergency medical services agencies for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer emergency medical services agency personnel, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a limited liability company having only one member, or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor, shareholder or member or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or sole shareholder, member or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly.

r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.

s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Education and Work, who shall be deemed employees of the Commonwealth for the purposes of this title.

2. "Employee" shall not mean:

a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall

not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth who are elected by the people or by the governing bodies, and who act in purely administrative capacities and are to serve for a definite term of office.

c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.

e. Casual employees.

f. Domestic servants.

g. Farm and horticultural laborers, unless the employer regularly has in service more than three full-time employees.

h. Employees of any person, firm or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees. An executive officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of this subdivision.

i. Employees of any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories and any foreign nation or nations, and any person suffering injury or death while he is employed by such carrier in such commerce. This title shall not be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed, or the personal representative, kindred or relation, or dependent of such person, may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce. However, this title shall not be construed to lessen the liability of such common carriers or take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire department or volunteer emergency medical services agency when engaged in activities related principally to participation as an individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 or a member of such fire department whether or not the volunteer continues to receive compensation from his employer for time away from the job.

l. Except as otherwise provided in this title, noncompensated employees and noncompensated directors of (i) corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954) or (ii) property owners' associations as defined in § 55.1-1800.

m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.

n. Any person who suffers an injury on or after July 1, 2012, for which there is jurisdiction under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq. However, this title shall not be construed to eliminate or diminish any right that any person or, in the case of the person's death, his personal representative, may have under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq.

o. An owner-operator of a motor vehicle that is leased with or to a common or contract carrier in the

trucking industry if (i) the owner-operator performs services for the carrier pursuant to a contract that provides that the owner-operator is an independent contractor and shall not be treated as an employee for purposes of the Federal Insurance Contributions Act, 26 U.S.C. § 3101 et seq., Social Security Act of 1935, P.L. 74-271, federal unemployment tax laws, and federal income tax laws and (ii) each of the following factors is present:

- (1) The owner-operator is responsible for the maintenance of the vehicle;
- (2) The owner-operator bears the principal burden of the vehicle's operating costs;
- (3) The owner-operator is the driver;
- (4) The owner-operator's compensation is based on factors related to the work performed and not on the basis of hours or time expended; and
- (5) The owner-operator determines the method and means of performing the service.

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire company or volunteer emergency medical services agency electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

"Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, "executive officer" does not include (a) noncompensated officers of corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954) or (b) noncompensated officers of a property owners' association as such term is defined in § 55.1-1800.

"Filed" means hand delivered to the Commission's office in Richmond or any regional office maintained by the Commission; sent by means of electronic transmission approved by the Commission; sent by facsimile transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, electronic transmission, or facsimile transmission shall be deemed completed only when the document or other material transmitted reaches the Commission or its designated agent.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or
2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and

2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

"Professional employer organization" means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

"Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

§ 66-3.2. Additional duties of the Director.

1765 A. The Director shall coordinate with the Department of Corrections the development and submission
1766 of requests for compensation from the United States Department of Justice State Criminal Alien
1767 Assistance Program for costs associated with incarcerating undocumented ~~aliens~~ *immigrants*.

1768 B. The Director shall forward to the Commonwealth's Attorneys' Services Council, updated on a
1769 monthly basis, a list of all juveniles, 14 years of age or older, that (i) have been committed to the
1770 Department; (ii) have been found guilty of a felony offense defined as a predicate criminal act under
1771 § 18.2-46.1, or have been adjudicated delinquent on the basis of an act that would be a felony and a
1772 predicate criminal act under § 18.2-46.1 if committed by an adult; and (iii) have been identified as
1773 belonging to a criminal gang. The list shall contain identifying information for each gang member, as
1774 well as the offense, court, and date of conviction or adjudication.