

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 573

*An Act to amend and reenact §§ 3.1-448, 3.1-450, 9-6.14:4.1, 18.2-340.20, 29.1-824, 46.2-1163, 46.2-1578, 55-79.102, 58.1-527, 58.1-3230, 59.1-373, 60.2-625, 62.1-111, and 63.1-165 of the Code of Virginia, relating to the applicability of the Administrative Process Act.*

[S 550]

Approved April 4, 1996

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

**1. That §§ 3.1-448, 3.1-450, 9-6.14:4.1, 18.2-340.20, 29.1-824, 46.2-1163, 46.2-1578, 55-79.102, 58.1-527, 58.1-3230, 59.1-373, 60.2-625, 62.1-111, and 63.1-165 of the Code of Virginia are amended and reenacted as follows:**

§ 3.1-448. Appeals generally.

Any person aggrieved by an order of the Commission refusing to issue or reissue a license, or revoking or suspending a license, to a distributor or producer-distributor, or refusing to transfer a license from one person to another, or any other order of the Commission applying only to a person or persons and not otherwise specifically provided for, may appeal therefrom to the ~~Supreme Court~~ *Court of Appeals*. Any person aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by any other general action, rule, regulation or order of the Commission, may, within ~~forty~~ *thirty* days after the effective date of such action, rule, regulation or order, appeal therefrom to the Circuit Court of the City of Richmond.

§ 3.1-450. Procedure on appeal to Circuit Court of Richmond.

(1) The appeals to the Circuit Court of the City of Richmond from actions of the Commission shall be by petition against the Commission as defendant, alleging therein in detail the action or order complained of, the objections thereto and specifying the relief asked and upon the filing of the petition for appeal the clerk of the court shall issue a summons returnable within thirty days.

On or before the return date of such summons, the Commission may file its plea, demurrer or answer to the allegations contained therein. Upon filing of its pleadings by the Commission the cause shall be matured for hearing in court without further pleadings, and, upon application of either party, the cause shall be placed at the head of the docket and heard forthwith.

(2) The Commission shall, on or before the return day of such summons, certify to and file, in the court wherein such appeal is instituted, the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact of the Commission, a copy of all orders made by the Commission pertaining to the proceedings, and a copy of the order, action or decision of the Commission which the petition calls upon the court to review.

(3) Mere technical irregularities in the procedure of the Commission shall not be the basis of the decision of the court. In an appeal from an order or decision of the Commission, the case shall be heard upon the record certified to the court by the Commission. Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order upon the business of parties to the record below, or of producers standing in the same position as producer parties of record, but the court may, in proper cases, remand the record of the Commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken. No part of the record, containing verbal or documentary evidence, shall be disregarded by courts because of technical rules of evidence.

(4) Upon the filing of the appeal in the Circuit Court of the City of Richmond, an order may be entered on the chancery side, summoning the Commission to appear on a day fixed therein to demur, plead or answer to the allegations of the petition, and on the return day, the cause shall be matured and set for hearing at the head of the docket. Upon the hearing, the court shall determine whether the order appealed is within the discretion vested in the Commission by law, and if so, whether the Commission has exercised a reasonable discretion or the order is unreasonable and capricious. If the Commission is found to be without authority of law to enter the order complained of, or that it was unreasonable and capricious, the court shall enter an order declaring the order of the Commission null and void. Where the appeal is from a finding of fact, the order of the Commission shall be given the weight of a jury on a fact found. If the court finds that the findings of fact are not sustained by the evidence, the court may either declare such findings of fact void or remand the cause to the Commission for further proceedings. *Issues on appeal shall be governed by Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.*

(5) The court shall have authority to assess costs upon either party, or to apportion such costs between the parties.

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the

following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.
  2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.
  3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.
  4. The Virginia Housing Development Authority.
  5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.
  6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.
  7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
  8. The Virginia Resources Authority.
  9. Agencies expressly exempted by any other provision of this Code.
  10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.
  11. The Council on Information Management.
  12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.
  - 13, 14. [Repealed.]
  15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
  16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.
  17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.
  18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.
  19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.
  20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.
  21. The Virginia War Memorial Foundation.
  22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
  23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.
  24. *The Virginia Small Business Financing Authority.*
- B. Agency action relating to the following subjects is exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
  2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
  3. The location, design, specifications or construction of public buildings or other facilities.
  4. Grants of state or federal funds or property.
  5. The chartering of corporations.
  6. Customary military, naval or police functions.
  7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
  8. The conduct of elections or eligibility to vote.
  9. Inmates of prisons or other such facilities or parolees therefrom.
  10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
  11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.
2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations with the prior approval of the Governor. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. *The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to § 45.1-161.82.*

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties ~~under~~ and other rulings in individual cases in connection

with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The award or denial of individual student loans by the Virginia Education Loan Authority.
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

8. *The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.*

*E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.*

~~E. F.~~ The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title ~~62-1~~ 28.2 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

~~F. G.~~ A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

~~G. H.~~ The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

~~H. I.~~ Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 18.2-340.20. Denial, suspension or revocation of permit; hearings and appeals.

A. The Commission may deny, suspend or revoke the permit of any organization found not to be in strict compliance with the provisions of this article and the regulations of the Commission.

B. No permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for the hearing. At the discretion of the Commission, hearings may be conducted by hearing officers who shall be selected from the list prepared by the Executive Secretary of the Supreme Court. After a hearing on the issues, the Commission may refuse to issue or may suspend or revoke any such permit if it determines that the organization has not complied with the provisions of this article or the regulations of the Commission.

C. Any person aggrieved by a refusal of the Commission to issue any permit, the suspension or revocation of a permit, or any other action of the Commission, may, ~~within thirty days of such action,~~ appeal to the circuit court in the jurisdiction where such charitable gaming was being or would have been conducted seek review of such action in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act. ~~If the court finds based on the record of the Commission that the action of the Commission is not supported by credible evidence, it shall order such relief as it deems appropriate. The decision of the court shall be subject to appeal as in other cases at law.~~

§ 29.1-824. Appeals to Court of Appeals; bond.

~~A.~~ Either party may appeal from the decision of the court to the Court of Appeals. Such appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

~~B.~~ No appeal shall be taken on behalf of the person whose license was suspended or revoked, until such person enter into a proper bond with surety approved by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the watercraft laws of this Commonwealth until final judgment of the Court of Appeals.

§ 46.2-1163. Official inspection stations; safety inspection approval stickers; actions of Superintendent subject to the Administrative Process Act.

The Superintendent may designate, furnish instructions to, and supervise official inspection stations for the inspection of motor vehicles, trailers, and semitrailers and for adjusting and correcting equipment enumerated in this chapter in such a manner as to conform to specifications hereinbefore set forth. The Superintendent shall adopt and furnish to such official inspection stations regulations governing the making of inspections required by this chapter. The Superintendent may at any time, after five days' notice, revoke the designation of any official inspection station designated by him.

If no defects are discovered or when the equipment has been corrected in accordance with this title, the official inspection station shall issue to the operator or owner of the vehicle, on forms furnished by the Department of State Police, a duplicate of which is retained by such station, a certificate showing

the date of correction, registration number of the vehicle, and the official designation of such station. There also shall be placed on the windshield of the vehicle at a place to be designated by the Superintendent an approval sticker furnished by the Department of State Police. If any vehicle is not equipped with a windshield, the approval sticker shall be placed on the vehicle in a location designated by the Superintendent. This sticker shall be displayed on the windshield of such vehicle or at such other designated place upon the vehicle at all times when it is operated on the highways in the Commonwealth and until such time as a new inspection period shall be designated and a new inspection sticker issued. Common carriers, operating under certificate from the State Corporation Commission *or the Department of Motor Vehicles*, who desire to do so may use with the approval of the Superintendent private inspection stations for the inspection and correction of their equipment.

*Actions of the Superintendent relating to official inspection stations shall be governed by the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).*

§ 46.2-1578. Appeals to Court of Appeals; bond.

Either party may appeal from the decision of the court under § 46.2-1577 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

~~No appeal shall be taken on behalf of the person whose license or certificate of registration or qualification was suspended or revoked until the person enters into a proper bond with surety approved by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the Court of Appeals.~~

§ 55-79.102. Judicial review.

~~Proceedings for judicial review shall be in accordance with law governing appeals from actions of governmental agencies~~ *the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).*

§ 58.1-527. Appeals from hearings; certain agencies subject to Administrative Process Act.

A. Within ~~ten~~ *thirty* days after the decision of the claimant agency upon a hearing pursuant to § 58.1-526 has become final, the debtor aggrieved thereby may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the debtor resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be named a defendant in a petition for judicial review.

B. Such petition shall also state the grounds upon which review is sought, shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases.

C. It shall not be necessary in any proceeding under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court.

*D. Notwithstanding the other provisions of this section, if the claimant agency is otherwise subject to the Administrative Process Act (§ 9-6.14:1 et seq.), appeals of such agency's decision as it relates to the debtor shall be held in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.*

§ 58.1-3230. Special classifications of real estate established and defined.

For the purposes of this article the following special classifications of real estate are established and defined:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services *in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)*, or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for a profit or otherwise, shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services *in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)*; or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for profit or otherwise, shall be considered real estate devoted

to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to forest use" shall mean land including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 *and in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)*. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240.

"Real estate devoted to open-space use" shall mean real estate used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240, *and in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)* and the local ordinance.

#### § 59.1-373. Hearing and appeal.

Any person aggrieved by a refusal of the Commission to issue any license or permit, the suspension or revocation of a license or permit, the imposition of a fine, or any other action of the Commission, may, ~~within thirty days of such action, appeal to the Circuit Court of the City of Richmond seek review of such action in accordance with Article 4 of the Administrative Process Act in the Circuit Court of the City of Richmond. If the court finds that the action of the Commission was arbitrary, it shall order such action as it deems appropriate. Further appeals shall also be in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act. The decision of the court shall be subject to appeal as in other cases at law.~~

#### § 60.2-625. Judicial review.

A. Within ~~ten~~ *thirty* days after the decision of the Commission upon a hearing pursuant to § 60.2-622 has ~~become final~~ *been mailed*, any party aggrieved who seeks judicial review shall commence an action in the circuit court of the county or city in which the individual who filed the claim was last employed. In such action against the Commission, the Commission and any other party to the administrative procedures before the Commission shall be named a defendant in a petition for judicial review. Such petition shall also state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate, and such service shall be deemed completed service on all parties. There shall be left with the party so served as many copies of the petition as there are defendants, and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this chapter, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of the court to the Court of Appeals in conformity with Part Five A of the Rules of Supreme Court and other applicable laws.

B. From any circuit court decision involving (i) the provisions of § 60.2-612 or § 60.2-618, (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding under this chapter, to enter exceptions to the rulings of the Commission or an appeal tribunal, and no bond shall be required upon an appeal to any court. Upon the final determination of such judicial proceeding, the Commission shall administer the Unemployment Compensation Fund in accordance with such determination.

C. The Commission shall have the right to appeal a decision of a circuit court in any proceeding under this chapter.

#### § 62.1-111. When leave not granted; terms and conditions; appeals.

If, on the report and other evidence, it appears to the court that by granting such leave other riparian owners will be injured, or there are other justifiable reasons for denying the petition, the leave shall not be granted; provided that in no case shall leave be granted if the certified statement from the State Water Control Board filed under § 62.1-109 shows that, in the opinion of such Board, the reduction of pollution will be impaired or made more difficult. If it be granted, the court shall place the applicant under such terms and conditions as shall seem to it right. An appeal shall lie to the ~~Supreme~~ *Court of Appeals*.

#### § 63.1-165. Appeal.

Any person aggrieved by any act of the Department or of its agents or employees or of its nominee in the administration of this article may appeal to the Department for a hearing and the decision of the Department on such appeal shall be final such act in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

**2. That the provisions of this act shall not apply to any agency action or the review of any agency action commenced prior to July 1, 1996.**