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HOUSE BILL NO. 2566

House Amendments in [] — February 7, 1999

A BILL to amend and reenact §§ 2.1-342, 3.1-611 through 3.1-618, 3.1-621 through 3.1-624, 3.1-626, 3.1-627, 3.1-629, 3.1-630, 3.1-632, 3.1-634, 3.1-635, and 3.1-636 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 3.1-634.1, and to repeal §§ 3.1-619, 3.1-620, 3.1-628, 3.1-631, 3.1-633, and 3.1-637 through 3.1-646 of the Code of Virginia, relating to apples; penalties.

Patrons—Davies, Abbitt, Guest, Landes, Putney, Sherwood, Van Yahres and Weatherholtz; Senators: Couric, Miller, K.G. and Potts

Referred to Committee on Agriculture

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 3.1-611 through 3.1-618, 3.1-621 through 3.1-624, 3.1-626, 3.1-627, 3.1-629, 3.1-630, 3.1-632, 3.1-634, 3.1-635, and 3.1-636 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 3.1-634.1 as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.

2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records, ~~and~~ *but shall* provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, but shall disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may

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60 charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public
61 body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres.
62 Such charges for the supplying of requested records shall be estimated in advance at the request of the
63 citizen. The public body may require the advance payment of charges which are subject to advance
64 determination.

65 In any case where a public body determines in advance that search and copying charges for
66 producing the requested documents are likely to exceed \$200, the public body may, before continuing to
67 process the request, require the citizen requesting the information to agree to payment of an amount not
68 to exceed the advance determination by five percent. The period within which the public body must
69 respond under this section shall be tolled for the amount of time that elapses between notice of the
70 advance determination and the response of the citizen requesting the information.

71 Official records maintained by a public body on a computer or other electronic data processing
72 system which are available to the public under the provisions of this chapter shall be made reasonably
73 accessible to the public at reasonable cost. Beginning July 1, 1997, every public body of state
74 government shall compile, and annually update, an index of computer databases which contains, at a
75 minimum, those databases created by them on or after July 1, 1997. "Computer database" means a
76 structured collection of data or documents residing in a computer. Such index shall be an official record
77 and shall include, at a minimum, the following information with respect to each database listed therein:
78 a list of data fields, a description of the format or record layout, the date last updated, a list of any data
79 fields to which public access is restricted, a description of each format in which the database can be
80 copied or reproduced using the public body's computer facilities, and a schedule of fees for the
81 production of copies in each available form. The form, context, language, and guidelines for the indices
82 and the databases to be indexed shall be developed by the Director of the Department of Information
83 Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall
84 not be required to disclose its software security, including passwords.

85 Public bodies shall not be required to create or prepare a particular requested record if it does not
86 already exist. Public bodies may, but shall not be required to, abstract or summarize information from
87 official records or convert an official record available in one form into another form at the request of
88 the citizen. The public body shall make reasonable efforts to reach an agreement with the requester
89 concerning the production of the records requested.

90 Failure to make any response to a request for records shall be a violation of this chapter and deemed
91 a denial of the request.

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

94 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult
95 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such
96 time as the release of such photograph will no longer jeopardize the investigation; reports submitted to
97 the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police
98 departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of
99 Title 23 in confidence; portions of records of local government crime commissions that would identify
100 individuals providing information about crimes or criminal activities under a promise of anonymity;
101 records of local police departments relating to neighborhood watch programs that include the names,
102 addresses, and operating schedules of individual participants in the program that are provided to such
103 departments under a promise of confidentiality; and all records of persons imprisoned in penal
104 institutions in the Commonwealth, provided such records relate to the imprisonment. Information in the
105 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
106 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions
107 of this chapter.

108 Criminal incident information relating to felony offenses shall not be excluded from the provisions of
109 this chapter; however, where the release of criminal incident information is likely to jeopardize an
110 ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection,
111 or result in the destruction of evidence, such information may be withheld until the above-referenced
112 damage is no longer likely to occur from release of the information.

113 2. Confidential records of all investigations of applications for licenses and permits, and all licensees
114 and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery
115 Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

116 3. State income, business, and estate tax returns, personal property tax returns, scholastic records and
117 personnel records containing information concerning identifiable individuals, except that such access
118 shall not be denied to the person who is the subject thereof, and medical and mental records, except that
119 such records can be personally reviewed by the subject person or a physician of the subject person's
120 choice; however, the subject person's mental records may not be personally reviewed by such person
121 when the subject person's treating physician has made a part of such person's records a written statement

that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education, such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested by the Office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that Department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at

183 the requester's expense, by the individual who is the subject thereof, in the offices of the Department of
184 Health Professions or in the offices of any health regulatory board, whichever may possess the material.

185 11. Records of active investigations being conducted by the Department of Health Professions or by
186 any health regulatory board in the Commonwealth.

187 12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for
188 executive or closed meetings lawfully held pursuant to § 2.1-344.

189 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

190 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
191 § 62.1-132.4 or § 62.1-134.1.

192 15. Contract cost estimates prepared for the confidential use of the Department of Transportation in
193 awarding contracts for construction or the purchase of goods or services and records, documents and
194 automated systems prepared for the Department's Bid Analysis and Monitoring Program.

195 16. Vendor proprietary information software which may be in the official records of a public body.
196 For the purpose of this section, "vendor proprietary software" means computer programs acquired from a
197 vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

198 17. Data, records or information of a proprietary nature produced or collected by or for faculty or
199 staff of state institutions of higher learning, other than the institutions' financial or administrative
200 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
201 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
202 private concern, where such data, records or information has not been publicly released, published,
203 copyrighted or patented.

204 18. Financial statements not publicly available filed with applications for industrial development
205 financings.

206 19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
207 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
208 the political subdivision.

209 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
210 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
211 Partnership or local or regional industrial or economic development authorities or organizations, used by
212 the Department, the Partnership, or such entities for business, trade and tourism development; and
213 memoranda, working papers or other records related to businesses that are considering locating or
214 expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and
215 where, if such records are made public, the financial interest of the governmental unit would be
216 adversely affected.

217 21. Information which was filed as confidential under the Toxic Substances Information Act
218 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

219 22. Documents as specified in § 58.1-3.

220 23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
221 center or a program for battered spouses.

222 24. Computer software developed by or for a state agency, state-supported institution of higher
223 education or political subdivision of the Commonwealth.

224 25. Investigator notes, and other correspondence and information, furnished in confidence with
225 respect to an active investigation of individual employment discrimination complaints made to the
226 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of
227 information taken from inactive reports in a form which does not reveal the identity of charging parties,
228 persons supplying the information or other individuals involved in the investigation.

229 26. Fisheries data which would permit identification of any person or vessel, except when required
230 by court order as specified in § 28.2-204.

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

233 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
234 standing committee, special committee or subcommittee of his house established solely for the purpose
235 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or
236 of formulating advisory opinions to members on standards of conduct, or both.

237 29. Customer account information of a public utility affiliated with a political subdivision of the
238 Commonwealth, including the customer's name and service address, but excluding the amount of utility
239 service provided and the amount of money paid for such utility service.

240 30. Investigative notes and other correspondence and information furnished in confidence with
241 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
242 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit
243 the distribution of information taken from inactive reports in a form which does not reveal the identity
244 of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

- (i) Security manuals, including emergency plans that are a part thereof;
- (ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;
- (iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;
- (iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;
- (v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;
- (vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;
- (vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and
- (viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

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

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

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

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery

306 Department relating to matters of a specific lottery game design, development, production, operation,
307 ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to
308 holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning,
309 advertising, or marketing, where such official records have not been publicly released, published,
310 copyrighted or patented. Whether released, published or copyrighted, all game-related information shall
311 be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game
312 to which it pertains.

313 38. Official records of studies and investigations by the State Lottery Department of (i) lottery
314 agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the
315 law or regulations which cause abuses in the administration and operation of the lottery and any
316 evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal
317 gambling where such official records have not been publicly released, published or copyrighted. All
318 studies and investigations referred to under clauses (iii), (iv) and (v) shall be subject to public disclosure
319 under this chapter upon completion of the study or investigation.

320 39. Those portions of engineering and construction drawings and plans submitted for the sole purpose
321 of complying with the building code in obtaining a building permit which would identify specific trade
322 secrets or other information the disclosure of which would be harmful to the competitive position of the
323 owner or lessee; however, such information shall be exempt only until the building is completed.
324 Information relating to the safety or environmental soundness of any building shall not be exempt from
325 disclosure.

326 40. [Repealed.]

327 41. Records concerning reserves established in specific claims administered by the Department of
328 General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et
329 seq.) of Chapter 32 of this title, or by any county, city, or town.

330 42. Information and records collected for the designation and verification of trauma centers and other
331 specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to
332 Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

333 43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

334 44. [Repealed.]

335 45. Investigative notes; correspondence and information furnished in confidence with respect to an
336 investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided
337 to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review
338 Commission; or investigative notes, correspondence, documentation and information furnished and
339 provided to or produced by or for the Department of the State Internal Auditor with respect to an
340 investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this
341 chapter shall prohibit disclosure of information from the records of completed investigations in a form
342 that does not reveal the identity of complainants, persons supplying information or other individuals
343 involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of
344 information from the records of completed investigations shall include, but is not limited to, the agency
345 involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and
346 the actions taken to resolve the complaint. In the event an investigation does not lead to corrective
347 action, the identity of the person who is the subject of the complaint may be released only with the
348 consent of the subject person.

349 46. Data formerly required to be submitted to the Commissioner of Health relating to the
350 establishment of new or expansion of existing clinical health services, acquisition of major medical
351 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

352 47. Documentation or other information which describes the design, function, operation or access
353 control features of any security system, whether manual or automated, which is used to control access to
354 or use of any automated data processing or telecommunications system.

355 48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
356 provided to the Department of Rail and Public Transportation, provided such information is exempt
357 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
358 administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to
359 data provided in confidence to the Interstate Commerce Commission and the Federal Railroad
360 Administration.

361 49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary
362 information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or
363 investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development,
364 coventuring, or management of real estate the disclosure of which would have a substantial adverse
365 impact on the value of such real estate or result in a competitive disadvantage to the corporation or
366 subsidiary.

367 50. Confidential proprietary records related to inventory and sales, voluntarily provided by private

energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

51. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

52. [Repealed.]

53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

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

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

b. Busiest hours, with the maximum number of customers in such government store; and

c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

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

429 62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a
430 proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
431 seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible
432 public entity for purposes related to the development of a qualifying transportation facility; and
433 memoranda, working papers or other records related to proposals filed under the Public-Private
434 Transportation Act of 1995, where, if such records were made public, the financial interest of the public
435 or private entity involved with such proposal or the process of competition or bargaining would be
436 adversely affected. In order for confidential proprietary information to be excluded from the provisions
437 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
438 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
439 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
440 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
441 Public-Private Transportation Act of 1995.

442 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
443 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
444 the general public; engineering plans, architectural drawings, or operational specifications of
445 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
446 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices;
447 however, general descriptions shall be provided to the public upon request.

448 64. All records of the University of Virginia or the University of Virginia Medical Center which
449 contain proprietary, business-related information pertaining to the operations of the University of
450 Virginia Medical Center, including its business development or marketing strategies and its activities
451 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
452 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
453 such information would be harmful to the competitive position of the Medical Center.

454 65. Patient level data collected by the Board of Health and not yet processed, verified, and released,
455 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
456 Health has contracted pursuant to § 32.1-276.4.

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

473 67. Confidential proprietary information or trade secrets, not publicly available, provided by a private
474 person or entity to the Virginia Resources Authority or to a fund administered in connection with
475 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
476 information is made public, the financial interest of the private person or entity would be adversely
477 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
478 confidentiality.

479 68. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its
480 franchising authority pursuant to a promise of confidentiality from the franchising authority which
481 relates to the franchisee's potential provision of new services, adoption of new technologies or
482 implementation of improvements, where such new services, technologies or improvements have not been
483 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
484 records were made public, the competitive advantage or financial interests of the franchisee would be
485 adversely affected. In order for confidential proprietary information to be excluded from the provisions
486 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other
487 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
488 which protection is sought, and (iii) state the reason why protection is necessary.

489 69. Records of the Intervention Program Committee within the Department of Health Professions to
490 the extent such records may identify any practitioner who may be, or who is actually, impaired to the

extent disclosure is prohibited by § 54.1-2517.

70. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or mental records, or other data identifying individual patients, or (ii) proprietary business or research related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

71. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

72. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

74. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

75. *Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.*

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in the Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including but not limited to his rights to call for evidence in his favor in a criminal prosecution.

§ 3.1-611. Definitions.

As used in this article unless the context otherwise requires:

(a) "Commissioner" means the Commissioner of Agriculture and Consumer Services.

(b) "Board" means the Board of Agriculture and Consumer Services.

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

(c) "Closed package" or "package" includes "Container" means any containers [closed] package of any description containing that is used to contain apples; except those otherwise exempt under this article which are enclosed on all sides, and includes boxes, barrels, baskets and bags of any size or material.

(d) "Used package" means any package which may have been used for packing apples or other commodities.

(e) All other words and terms shall be defined as in Chapter 2 (§ 1-10 et seq.) of Title 1.

"Packer" means any person who first packs apples in a container for shipment or sale.

§ 3.1-612. Marking containers; contents to conform to markings.

No apples, except apples for delivery delivered for processing or packing or delivered to a storage for packing, shall be sold, packed for sale, offered for sale or transported for sale, in closed packages containers, unless:

552 (a) 1. Each such ~~package container~~ bears conspicuously in plain words and figures on the outside, or
 553 on a durable stuffer within and readily readable from the outside, showing the correct size, minimum
 554 quantity and correct variety of the apples in the ~~package container~~, one of the official ~~standard~~ grades
 555 and one of the official standards for apples established by the Board under this article, and the name
 556 and address of the ~~grower producer's~~ or ~~packer~~, *packer's business*; and

557 (b) 2. The apples in each such ~~package container~~ conform to the markings appearing on such
 558 ~~package container~~.

559 § 3.1-613. Packing in used containers.

560 When apples are packed in used ~~packages containers~~, any markings pertaining to previous contents
 561 of such ~~packages containers~~ shall be obliterated *by the producer or packer* and the markings required
 562 under this article shall be substituted.

563 § 3.1-614. Prima facie evidence of being offered or transported for sale.

564 When ~~packages containers~~ of apples are placed in transit for sale or delivery or delivered to a
 565 ~~storage~~ for storage, such transit or delivery shall be prima facie evidence that the apples are offered or
 566 transported for sale.

567 § 3.1-615. Rules and regulations; grades and standards.

568 In order to provide for the orderly marketing of apples and the protection of the purchasing public,
 569 the Board shall have the power to adopt reasonable rules and regulations for the *implementation and*
 570 enforcement of this article.

571 The Board shall establish and promulgate from time to time official ~~standard~~ grades and standards
 572 for apples by which the quality, quantity and size of the apples may be determined. Before establishing
 573 such official ~~standard~~ grades and standards, the Board shall consult with the Board of Directors of the
 574 Virginia Horticultural Society and the Board of Directors of the Virginia Apple Growers Association.

575 § 3.1-616. Enforcement of article.

576 The Board is charged with the enforcement of this article and for that purpose the Board ~~or~~ and its
 577 authorized agents shall have the power to:

578 (a) ~~To~~ 1. Enter and inspect all ~~premises and~~ places within the Commonwealth where apples are
 579 produced, packed or stored for sale, shipped, delivered for shipment, offered or exposed for sale, or
 580 sold, and to inspect such places and all apples, ~~apple~~ containers and equipment found in any such
 581 places.

582 (b) ~~To~~ 2. Institute injunction proceedings for violations of any provision of this article or regulation
 583 adopted hereunder in any court of competent jurisdiction in any county or city of the Commonwealth
 584 where apples may be found improperly marked in violation of any provision of this article, either
 585 through the attorney for the Commonwealth or otherwise.

586 (c) ~~To~~ 3. Prohibit in writing the movement in intrastate, interstate or foreign commerce of any apples
 587 found improperly marked in violation of any provision of this article or regulation adopted hereunder
 588 until such apples have been properly marked under this article or regulation adopted hereunder and
 589 released in writing by the Board or its authorized agent.

590 § 3.1-617. Penalty for violation.

591 Any person, firm, corporation, organization or association, except a contract or common carrier, who
 592 or which moves or causes to be moved any apples, the movement of which has been prohibited in
 593 writing as provided in § 3.1-616, shall be guilty of a *Class 1* misdemeanor and shall be punished by a
 594 fine of not less than \$100 nor more than \$500 for each such offense.

595 Article 2.

596 Virginia State Apple Board; Excise Tax on Apples Sold for Certain Purposes.

597 § 3.1-618. Definitions.

598 As used in this article:

599 "Board" means the Virginia State Apple Board.

600 "Bushel ~~erate~~" means a container with a content of not less than ~~2,100~~ 2,140 cubic inches nor more
 601 than 2,500 cubic inches.

602 "~~Commission~~" means the Virginia State Apple Board.

603 "*District*" means one of the districts set forth in § 3.1-632.

604 "*Member*" means a member of the Board.

605 "*Packer*" means any person who first packs apples in a container for shipment or sale.

606 "*Person*" means and includes individuals, corporations, partnerships, trusts, associations,
 607 cooperatives, and any and all other business units, devices and arrangements.

608 "*Taxpayer*" means the person who first sells the apples, subject to the tax imposed by this article,
 609 whether or not, at the time of the sale, severance from the realty has occurred.

610 "*Processing*" means changing the form of apples from their naturally occurring form.

611 "*Processor*" means any person who processes apples for sale.

612 "*Producer*" means any person who, in a tax year, grows or causes to be grown within the
 613 Commonwealth, for sale, a minimum of 500 bushels of apples.

"Tax year" means the period from July 1 of one year through June 30 of the immediately following year.

§ 3.1-621. Excise tax levied.

(a) A. There shall be levied on all ungraded bulk apples produced grown in Virginia and sold for fresh consumption an excise tax of ~~5~~/~~e~~ five cents per bushel ~~erate if sold by volume~~, or ~~10~~/~~e~~ ten cents per 100 pounds if sold by weight.

B. There shall be levied on all apples grown in Virginia that are graded and packed in containers in Virginia an excise tax of ten cents per bushel.

(b) C. There shall be levied on all apples produced in Virginia and used or sold for processing, slicing, freezing, juice production or other commercial uses an excise tax of ~~5~~/~~e~~ five cents per 100 pounds.

(c) Taxes levied under this section shall be paid by the taxpayer at the time and in the manner hereinafter provided. No tax shall be due under this article on apples subject to the tax imposed by Article 3 (§ 3.1-631 et seq.) of this chapter.

§ 3.1-622. Reports of apples sold.

A. Every ~~taxpayer~~ producer shall submit to the Board not later than ~~December~~ January 31 of each year, ~~on forms prescribed and furnished by the Board, a report consisting of a signed statement of all the weight or number of bushels of apples sold by the producer from July 1 through December 15 by him during the preceding crop season. Such apples shall be reported on forms prescribed and furnished by the Board. Any person who sells apples of the preceding year's production after December 15 shall file a signed statement with the Board not later than May 31 showing such apples so sold by him 31 of the previous year.~~

B. Every producer shall submit to the Board not later than [~~June 30~~ July 31] of each year, on forms prescribed and furnished by the Board, a report consisting of a signed statement of the weight or number of bushels of apples sold by the producer from January 1 through [~~May 31~~ June 30] of that year.

[~~C. Every producer shall submit to the Board not later than 20 days after the end of any month on which such selling was done, on forms prescribed and furnished by the Board, a report consisting of a signed statement of the weight or number of bushels of apples harvested during the tax year and sold by the producer during June of that tax year or during any month of the subsequent tax year.~~]

§ 3.1-623. Time of payment of excise tax; disposition thereof.

A. ~~Fifty per centum of~~ On or before January 31 of each year, the producer shall pay the excise tax levied by this article shall be due and payable not later than ~~December 31~~ of each year and the balance not later than May 31 of the following year. Any apples of a crop season which are sold after May 31 of the following year shall be reported to the Board and the excise tax paid thereon within twenty days after the end of the month in which such selling was done. ~~on the apples sold between July 1 and December 31 of the previous year.~~

B. On or before [~~June 30~~ July 31] of each year, the producer shall pay the excise tax levied by this article on apples sold between January 1 and [~~May 31~~ June 30] of that year.

C. [~~Within 20 days after the end of any month in which such selling was done, the producer shall pay the excise tax levied by this article on apples harvested during tax year and sold by the producer during June of that tax year or during any month of the subsequent tax year.~~

~~D.~~] Such excise tax shall be paid to the Virginia State Apple Board and by it promptly paid into the state treasury to the credit of the Apple Merchandising Fund.

§ 3.1-624. Records; penalty.

[~~A.~~] The taxpayer Every producer shall keep a complete record records of the quantity of apples packed, processed or sold by him, and shall preserve such record and forms records for a period of not less than two years from the time such apples are packed, processed or sold. Such records shall include the names of any other producers from which the producer received apples and the quantity of apples received from each.

[~~B.~~ Every packer shall keep complete records of the quantity of apples packed or sold by him and shall preserve such records for a period of not less than two years from the time such apples are packed or sold. Such records shall include the names of the producers from which the packer received apples and the quantity of apples received from each.

C. Every processor shall keep complete records of the quantity of apples processed by him and shall preserve such records for a period of not less than two years from the time such apples are processed. Such records shall include the names of the producers from which the processor received apples and the quantity of apples received from each.]

[~~D.~~] Such Records and forms required to be kept by this section shall be established and maintained as required by the Board. Such records and forms shall be open to the inspection of the Board and its duly authorized agents and shall be submitted to the Board within 60 days of a request by

675 *the Board. It shall be a Class 3 misdemeanor for any producer [; packer or processor] to fail to*
 676 *make such records available to the Board or its duly authorized agents.*

677 § 3.1-626. Apple Fund; audit.

678 All moneys levied and collected under the provisions of this article shall be credited on the
 679 Comptroller's books to a fund to be known as the "Apple Merchandising Fund." All moneys credited to
 680 the Apple Merchandising Fund are hereby appropriated for the purposes herein set forth, and shall be
 681 used exclusively for the administration and enforcement of this article and of Article 3 (~~§ 3.1-631 et~~
 682 ~~seq.~~) of this chapter, including the collection of the ~~taxes~~ *apple excise tax*, the payment for personal
 683 services and expenses of employees and agents of the Board and the payment of rent, services, materials
 684 and supplies necessary to effectuate the purposes and objects of this article and of Article 3 of this
 685 chapter. *The Auditor of Public Accounts shall audit all the accounts of the Board as provided for in*
 686 *§ 2.1-155. The unexpended balance of the Apple Merchandising Fund at the end of each biennium shall*
 687 *not be transferred to the general fund of the state treasury, but shall remain in the Apple Fund.*

688 § 3.1-627. How moneys expended.

689 All moneys collected under this article shall be expended by the ~~Virginia State Apple Board~~ by
 690 warrants of the Comptroller on the ~~State Treasurer~~ *state treasury* issued on vouchers signed by the duly
 691 authorized officer of the Board.

692 § 3.1-629. False reports or records; failure to keep or preserve records; *penalty*.

693 It shall be a *Class 1* misdemeanor for any ~~taxpayer~~ *producer* knowingly to report falsely to the
 694 Board the quantity of apples sold by him during any period or to falsify the records of the apples sold
 695 by him, or to fail to keep a complete record of the apples sold by him, or to preserve such record for a
 696 period of ~~not less than~~ two years from the time such apples are sold.

697 § 3.1-630. State and county officers to assist in enforcement.

698 ~~It shall be the duty of~~ All state and county law-enforcement officers ~~to~~ *shall* assist in the
 699 enforcement of this article.

700 Article 3.

701 State Apple Board.

702 § 3.1-632. Commercial apple-producing districts of Virginia.

703 The commercial apple-producing districts of Virginia ~~and the counties and city constituting the same~~
 704 are as follows:

705 I. Northern Virginia District - *Clarke, Fairfax, Frederick, Clarke, and Loudoun and Fairfax Counties,*
 706 *and the City of Winchester.*

707 II. ~~Shenandoah~~ Central Virginia District - ~~Rockingham, Shenandoah and Page Counties~~ *Accomack,*
 708 *Fauquier, King William, Lancaster, Madison, Middlesex, Northampton, Northumberland, Orange, Page,*
 709 *Rappahannock, Richmond, Rockingham, Shenandoah, Warren, and Westmoreland Counties.*

710 III. ~~Roanoke~~ Southern Virginia District - *Albemarle, Amherst, Augusta, Bedford, Botetourt,*
 711 *Buckingham, Carroll, Charlotte, Dickenson, Franklin, Floyd, Giles, Grayson, Halifax, Hanover, Henry,*
 712 *Isle of Wight, James City, Lee, Louisa, Lunenburg, Montgomery, Nelson, Nottoway, Patrick,*
 713 *Pittsylvania, Prince Edward, Pulaski, Roanoke, Rockbridge, Russell, Smyth, Southampton, Surry, Wise*
 714 *and Wythe Counties.*

715 IV. ~~Southwest~~ Virginia District - *Carroll, Smyth, Wise, Wythe, Dickenson, Grayson, Lee, Russell,*
 716 *Patrick and Henry Counties.*

717 V. Southern Piedmont - Shenandoah District - *Albemarle, Amherst, Nelson, Charlotte, Halifax,*
 718 *Hanover, Isle of Wight, James City, Louisa, Lunenburg, Nottoway, Prince Edward, Southampton, Surry,*
 719 *Augusta, Rockbridge, Buckingham Counties, and the City of Newport News.*

720 VI. Northern Piedmont District - *Fauquier, Madison, Rappahannock, Warren, Accomack, King*
 721 *William, Lancaster, Middlesex, Northampton, Northumberland, Orange and Richmond Counties.*

722 In any case in which the commercial production of apples begins in any county *or city* not included
 723 above, such county *or city* shall be and become a part of the nearest adjacent district; ~~provided that if~~
 724 ~~there are two or more such districts such county or city shall become a part of that district which has~~
 725 the lowest commercial apple production according to production records of the Department of
 726 Agriculture and Consumer Services.

727 § 3.1-634. Composition of Board; qualifications and terms of members; chairman; compensation of
 728 members.

729 The Virginia State Apple Commission within the Department of Agriculture and Consumer Services
 730 is continued and shall hereafter be known as the *The Virginia State Apple Board is hereby established*
 731 *within the Department of Agriculture and Consumer Services.* The Board shall consist of at least six
 732 nine members elected as provided in § 3.1-634.1, with three members representing as nearly as possible
 733 each important apple-producing section of Virginia with the additional members and representation as
 734 provided in ~~§ 3.1-633~~ *district.* Each member must be a citizen of Virginia and *who is engaged in*
 735 *producing apples in Virginia, who has paid his excise taxes pursuant to § 3.1-623, and a majority of*
 736 *whose apple production occurs in the district he represents.*

Members shall be elected for terms of ~~two~~ *three* years beginning July 1, *except as provided in § 3.1-634.1 B 1.* The members shall be elected in a referendum held by the Commissioner of Agriculture and Consumer Services in the district for which a vacancy will exist on the Board. Any packer or taxpayer in such district who is liable in such district and pays the tax imposed by this article shall have the right to vote in the referendum held to fill such vacancy. The referendum shall be by secret ballot and shall be held at least thirty days but not more than ninety days before the expiration of the term of office of any member. In any case of a vacancy occurring other than by the expiration of the term of office such vacancy shall likewise be filled by a referendum held to elect a member for the unexpired term. The candidate receiving the highest number of votes in a referendum held hereunder shall thereupon be appointed by the Commissioner of Agriculture and Consumer Services as a member of the Board. The Board may make and enforce rules and regulations governing the conduct of the referendums and voting thereon. *There shall be no limitation on the number of terms of office that a member may serve; however, after serving two consecutive full terms of office, a member shall be ineligible for membership for one year after the expiration of his most recent term.*

If a member fails to attend a minimum of two Board meetings per tax year or otherwise fails to meet the qualifications for membership established by this section, he may be removed by [the Commissioner of Agriculture and Consumer Services upon the request of] the Board.

The Board shall elect one of its members as chairman. The members of the Board shall serve without compensation, but they ~~shall~~ *may* be reimbursed for actual expenses incurred in attending meetings of the Board.

§ 3.1-634.1. Special election; voting requirements; filling unexpired terms; method of voting.

A. The Commissioner of Agriculture and Consumer Services shall hold a special election in each district to elect each member. The special election shall be held by secret ballot at least thirty days but not more than ninety days before the expiration of the term of office of any member. The candidate receiving the highest number of votes in the special election shall thereupon be appointed by the Commissioner of Agriculture and Consumer Services as a member. In the case of a vacancy occurring other than by the expiration of the term of office, such vacancy shall be filled within at least thirty days but not more than ninety days before or after the vacancy by a special election held to elect a member for the unexpired term. The Board may make and enforce rules and regulations governing the conduct of special elections and voting therein. Such rules and regulations shall be exempt from Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.

B. A producer shall be eligible to vote only in the district where the majority of his apple production occurs and only if he has paid all excise taxes in accordance with this article for the five tax years preceding the election. Votes will be allocated among eligible producers as follows:

1. All nine Board members shall be elected in 1999. In such election, each eligible producer may cast one vote. One member from each district shall be elected for a one-year term, one member from each district shall be elected for a two-year term, and one member from each district shall be elected for a three-year term. Each ballot shall specify the persons who are candidates for the one-year term, the persons who are candidates for the two-year term and the persons who are candidates for the three-year term.

2. For elections held in 2000 and every third year thereafter, each eligible producer may cast one vote.

3. For elections held in 2001 and every third year thereafter, each eligible producer may cast one vote for each 500 bushels of apples produced in the tax year immediately preceding the election, as shown by the reports required to be submitted under § 3.1-622. Production figures shall be rounded to the lowest 500 bushels. However, any person who produced fewer than 500 bushels of apples in such tax year and paid a donation to the Apple Fund in an amount equal to the tax he would have paid, had he been a producer as defined in § 3.1-618, may cast one vote.

4. For elections held in 2002 and every third year thereafter, any eligible producer may cast one vote for each \$100 of excise taxes paid in accordance with this article for the tax year immediately preceding the election. Tax figures shall be rounded to the lowest \$100. However, (i) any producer who paid less than \$100 in excise taxes for such tax year may cast one vote and (ii) any person who produced fewer than 500 bushels of apples in such tax year and paid a donation to the Apple Fund in an amount equal to the tax he would have paid, had he been a producer as defined in § 3.1-618, may cast one vote.

§ 3.1-635. Powers and duties; report.

(a) All funds levied and collected under this article shall be administered by the Board.

(b) A. It shall be the duty of The Board is authorized to:

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

2. Plan and conduct campaigns of education, advertising, publicity, sales promotions, and research for the purpose of increasing the demand for, and the consumption of, enhancing the viability and

798 *profitability of the Virginia apples, and the Board may apple industry;*

799 3. Make contracts; ~~expend moneys of the Apple Merchandising Fund and do whatever else may be~~
800 ~~necessary to effectuate to accomplish~~ the purposes of this article.;

801 (c) 4. The Board shall have authority to Cooperate with other state, regional and national
802 agricultural and horticultural organizations in research, advertising, publicity, education, and other means
803 of promoting the sale and use of apples, and to expend moneys of the Apple Merchandising Fund for
804 such purposes.;

805 (d) 5. The Board shall have authority to Appoint a secretary and such other employees as may be
806 necessary, at salaries to be fixed by the Board, subject to the provisions of the Virginia Personnel Act
807 (§ 2.1-110 et seq.);

808 (e) The Board shall have authority to prescribe the records and forms which packers shall maintain in
809 order to facilitate collection of the tax and to require packers to maintain such records and forms in such
810 manner as will show the amount of tax due under this article.

811 6. Establish committees of the Board to address horticultural, marketing, and such other issues as
812 the Board deems pertinent to the Virginia apple industry; and

813 7. Do whatever else may be necessary to effectuate the purposes of this article.

814 (f) B. The chairman shall make a report at least annually, furnishing Board members with a statement
815 of total receipts and disbursements of the Board for the year. The chairman shall *annually* file with the
816 Commissioner a copy of such the report and audit as that is required by § 3.1-642 with the
817 Commissioner annually 3.1-626.

818 § 3.1-636. Bond of employees.

819 All employees of the Board handling money under this article shall be required to furnish surety
820 bonds.

821 2. That §§ 3.1-619, 3.1-620, 3.1-628, 3.1-631, 3.1-633 and 3.1-637 through 3.1-646 of the Code of
822 Virginia are repealed.

823 3. That the terms of the members serving on the Virginia State Apple Board on July 1, 1999, shall
824 expire upon the election of a new Board as provided in § 3.1-634.1 B 1. Notwithstanding any
825 provision § 3.1-634, the members serving on the Virginia State Apple Board on July 1, 1999, shall
826 be eligible to serve two consecutive full terms after July 1, 1999.

827 [4. That this act shall become effective on July 1, 2000.]