VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 2.1-1.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 9 a chapter numbered 50, consisting of sections 9-380 through 9-388, and by adding in Title 32.1 a chapter numbered 14, consisting of sections numbered 32.1-354 through 32.1-365, relating to the distribution and use of funds pursuant to the Master Settlement Agreement with tobacco product manufacturers; establishment of the Tobacco Indemnification and Community Revitalization Commission and Fund; and establishment of the Virginia Tobacco Settlement Foundation and Fund.

[H 2635]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-1.5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 9 a chapter numbered 50, consisting of sections 9-380 through 9-388, and by adding in Title 32.1 a chapter numbered 14, consisting of sections numbered 32.1-354 through 32.1-365, as follows:

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or the enabling legislation of the entities:

Authorities

Assistive Technology Loan Fund Authority.
Medical College of Virginia Hospitals Authority.
Richmond Eye and Ear Hospital Authority.
Small Business Financing Authority.
Virginia Agriculture Development Authority.
Virginia College Building Authority.
Virginia Economic Development Partnership.
Virginia Housing Development Authority.
Virginia Information Providers Network Authority.
Virginia Innovative Technology Authority.
Virginia Port Authority.
Virginia Public Building Authority.
Virginia Public School Authority.
Virginia Resources Authority.

Boards

Board of Commissioners, Virginia Agriculture Development Authority.
Board of Commissioners, Virginia Port Authority.
Board of Directors, Assistive Technology Loan Fund Authority.
Board of Directors, Medical College of Virginia Hospitals Authority.
Board of Directors, Richmond Eye and Ear Hospital Authority.
Board of Directors, Small Business Financing Authority.
Board of Directors, Virginia Economic Development Partnership.
Board of Directors, Virginia Innovative Technology Authority.
Board of Directors, Virginia Resources Authority.
Board of Regents, Gunston Hall Plantation.
Board of Regents, James Monroe Memorial Law Office and Library.
Board of Trustees, Family and Children's Trust Fund.
Board of Trustees, Frontier Culture Museum of Virginia.
Board of Trustees, Jamestown-Yorktown Foundation.
Board of Trustees, Miller School of Albemarle.
Board of Trustees, Rural Virginia Development Foundation.
Board of Trustees, The Science Museum of Virginia.
Board of Trustees, Virginia Museum of Fine Arts.
Board of Trustees, Virginia Museum of Natural History.
Board of Trustees, Virginia Outdoor Foundation.
Board of Visitors, Christopher Newport University.

Board of Visitors, The College of William and Mary in Virginia.
Board of Visitors, George Mason University.
Board of Visitors, Gunston Hall Plantation.
Board of Visitors, James Madison University.
Board of Visitors, Longwood College.
Board of Visitors, Mary Washington College.
Board of Visitors to Mount Vernon.
Board of Visitors, Norfolk State University.
Board of Visitors, Old Dominion University.
Board of Visitors, Radford University.
Board of Visitors, University of Virginia.
Board of Visitors, Virginia Commonwealth University.
Board of Visitors, Virginia Military Institute.
Board of Visitors, Virginia Polytechnic Institute and State University.
Board of Visitors, Virginia State University.
Commonwealth Health Research Board.
Governing Board, Virginia College Building Authority.
Governing Board, Virginia Public School Authority.
Library Board, The Library of Virginia.
Motor Vehicle Dealer Board.
State Board for Community Colleges, Virginia Community College System.
Virginia-Israel Advisory Board.
(Effective until July 1, 2002) Wireless E-911 Service Board.

Commissions

Advisory Commission on the Virginia Schools for the Deaf and the Blind.
Alexandria Historical Restoration and Preservation Commission.
Charitable Gaming Commission.
Chesapeake Bay Bridge and Tunnel Commission.
Hampton Roads Sanitation District Commission.
Tobacco Indemnification and Community Revitalization Commission.

Districts

Chesapeake Bay Bridge and Tunnel District.
Hampton Roads Sanitation District.

Educational Institutions

Christopher Newport University.
Frontier Culture Museum of Virginia.
George Mason University.
James Madison University.
Jamestown-Yorktown Foundation.
Longwood College.
Mary Washington College.
Miller School of Albemarle.
Norfolk State University.
Old Dominion University.
Radford University.
The College of William and Mary in Virginia.
The Library of Virginia.
The Science Museum of Virginia.
University of Virginia.
Virginia Commonwealth University.
Virginia Community College System.
Virginia Military Institute.
Virginia Museum of Fine Arts.
Virginia Polytechnic Institute and State University.
Virginia State University.

Foundations

Chippokes Plantation Farm Foundation.
Rural Virginia Development Foundation.
Virginia Arts Foundation.
Virginia Conservation and Recreation Foundation.
Virginia Historic Preservation Foundation.

Virginia Outdoor Foundation.

Museum

Virginia Museum of Natural History.

Partnership

A. L. Philpott Manufacturing Extension Partnership.

Plantation

Gunston Hall Plantation.

CHAPTER 50.

TOBACCO INDEMNIFICATION AND COMMUNITY REVITALIZATION COMMISSION.

§ 9-380. Definitions.

As used in this chapter:

"Active tobacco producer" means a person who is the actual producer, as determined by the United States Department of Agriculture (USDA), of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment for the 1998 crop year as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to § 9-381.

"Economic loss" means a loss of investment in specialized equipment and barns and lost tobacco production opportunities associated with a decline in quota.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 9-385.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998.

"Quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Tobacco farmer" means a person who is an active tobacco producer, a quota holder, or both.

§ 9-381. Commission created; purposes.

The Tobacco Indemnification and Community Revitalization Commission is hereby created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is hereby vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of administering the moneys in the Tobacco Indemnification and Community Revitalization Fund and distributing such moneys for the purposes provided in this chapter, including using moneys in the Fund to (i) indemnify tobacco growers from the adverse economic effects of the Master Settlement Agreement and (ii) revitalize tobacco dependent communities. The Commission shall have only those powers enumerated in § 9-383.

§ 9-382. Membership; terms; vacancies; chairman.

A. The Commission shall be composed of twenty-one members. Four members shall be appointed by the Speaker of the House of Delegates from the membership thereof in accordance with the principles of Rule 16 of the House of Delegates adopted at the 1998 Regular Session of the General Assembly; three members shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate; three members shall be local elected officials of whom two shall be appointed by the Speaker of the House of Delegates and one shall be appointed by the Privileges and Elections Committee of the Senate; three members shall be active flue-cured tobacco producers of whom two shall be appointed by the Speaker of the House of Delegates and one shall be appointed by the Privileges and Elections Committee of the Senate; three members shall be active burley tobacco producers of whom two shall be appointed by the Speaker of the House of Delegates and one shall be appointed by the Privileges and Elections Committee of the Senate; one member shall be the Commissioner of Agriculture and Consumer Affairs or his designee; one member shall be a representative of the Virginia Farm Bureau Federation appointed by the Virginia Farm Bureau Federation; and three members shall be citizens appointed by the Governor. With the exception of the Commissioner of Agriculture and Consumer Affairs or his designee, all members of the Commission shall reside in the Southside and Southwest regions of the Commonwealth. To the extent feasible, appointments representing the Southside and Southwest regions shall be proportional to the tobacco quota production of each region.

All appointments shall be for terms of four years each. Vacancies shall be filled for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who

appointed such member shall make an appointment from his respective house to complete the term. Any appointment to fill a vacancy shall be made in the same manner as the original appointment.

B. The members of the Commission shall elect annually a chairman and vice-chairman from among the members. The chairman of the Commission shall be a legislative member. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Commission. A majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.

C. Members of the Commission shall receive compensation as provided in § 2.1-20.3 and shall receive reimbursement for actual expenses incurred in the performance of their duties on behalf of the Commission. Such compensation and expenses shall be paid from the Fund.

§ 9-383. Powers and duties of the Commission.

A. The Commission is hereby granted, shall have, and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. To adopt, use, and alter at will an official seal;

2. To make bylaws for the management and regulation of its affairs;

3. To maintain an office at such place or places within this Commonwealth as it may designate;

4. To accept, hold, and administer moneys distributed to the Commission pursuant to Master Settlement Agreement and other money, securities, or other property appropriated, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;

5. To distribute the moneys in the Fund for the purposes set forth in this chapter;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. To invest its funds as provided in this chapter or permitted by applicable law; and

8. To do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied.

B. The Commission shall distribute one-sixth of the moneys deposited in the Fund, concurrently with the deposit of moneys into the Fund under the Master Settlement Agreement, to the Virginia Tobacco Settlement Fund established pursuant to § 32.1-360.

C. The Commission shall distribute the remaining available moneys in the Fund as follows:

1. To indemnify tobacco farmers in the Commonwealth for the decline or elimination of tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998. The Commission shall compensate such tobacco farmers in an amount equal to the total lost asset value in quota incurred annually by such tobacco farmers. The Commission shall also compensate an active tobacco producer for the economic loss resulting from any annual quota reduction. The total asset loss value in quota and economic losses for active tobacco producers in Virginia is estimated to be $1.2 billion. The Commission shall make such payments from settlement dollars received into the Fund, after taking into account on a dollar-for-dollar basis funds received for such purpose by the farmer from Phase II of the Master Settlement Agreement; and

2. Subject to the affirmative vote of two-thirds of the membership of the Commission, to promote economic growth and development in tobacco dependent communities, in order to assist such communities in reducing their dependency on tobacco and tobacco-related business.

D. The Commission shall undertake studies and gather information and data in order to determine (i) the economic consequences of the reduction in or elimination of quota for tobacco growers, (ii) the potential for alternative cash crops, and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth.

§ 9-384. Appointment of director.

The Commission may employ an executive director who shall also be the secretary and who shall administer, manage and direct the affairs and business of the Commission, in accordance with the provisions of this chapter and subject to the policies, control and direction of the Commission. The Commission may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Commission may delegate to one or more of its agents or employees such administrative duties as it may deem proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

§ 9-385. Tobacco Indemnification and Community Revitalization Fund.

The Commission shall establish a fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Commission shall cause to be deposited into the Fund sixty percent of the moneys earmarked for use in the Commonwealth under Phase I of the Master Settlement Agreement. Money in the Fund shall be used solely to implement the provisions of § 9-383. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of § 9-383.

§ 9-386. Audit.

The accounts of the Commission shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 9-387. Forms of accounts and records.

The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

§ 9-388. Reports to the Governor and General Assembly.

The Commission shall submit a report annually to the Governor and the General Assembly.

CHAPTER 14.

VIRGINIA TOBACCO SETTLEMENT FOUNDATION.

§ 32.1-354. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Board" means the Board of Trustees of the Foundation appointed pursuant to § 32.1-357.

"Director" means the director of the Foundation appointed pursuant to § 32.1-358.

"Foundation" means the Virginia Tobacco Settlement Foundation, created pursuant to § 32.1-355.

"Fund" means the Virginia Tobacco Settlement Fund established pursuant to § 32.1-360.

§ 32.1-355. Virginia Tobacco Settlement Foundation created; purposes.

The Virginia Tobacco Settlement Foundation is hereby created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is hereby vested with, all of the politic and corporate powers as are set forth in this chapter. The Foundation is established for the purpose of administering the moneys received pursuant to subsection B of § 9-383 and distributing such moneys for the purposes provided in this chapter, including using moneys in the Virginia Tobacco Settlement Fund to assist in financing efforts to restrict the use of tobacco products by minors through such means as educational and awareness programs on the health effects of tobacco use on minors and enforcement of laws restricting the distribution of tobacco products to minors. The Foundation shall have only those powers enumerated in § 32.1-356.

§ 32.1-356. Powers of the Foundation.

The Foundation is hereby granted all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. To have an official seal and to alter the same at pleasure;

2. To have succession until dissolved by the General Assembly, in which event title to the properties of the Foundation, both real and personal, shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the Foundation, pass to and become vested in the Commonwealth;

3. To maintain an office at such place or places within this Commonwealth as it may designate;

4. To accept, hold, and administer moneys distributed to the Foundation pursuant to subsection B of § 9-383 and other money, securities, or other property appropriated, given, or bequeathed to the Foundation, absolutely or in trust, for the purposes for which the Foundation is created;

5. To distribute the moneys in the Fund to entities for use in restricting the use of tobacco products by minors in the Commonwealth, on such terms and in such amounts as determined by the Board;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. To appoint and prescribe the duties of such officers, agents, employees, advisors, and consultants as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the Foundation may determine;

8. To adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of the Foundation;

9. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to the Foundation, upon which such aid, grants, contributions and cooperation may be made;

10. To invest its funds as provided in this chapter or permitted by applicable law; and

11. To do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied.

§ 32.1-357. Board of Trustees; appointment; officers.

A. The Foundation shall be governed and administered by a Board of Trustees consisting of fifteen members. Two members shall be appointed by the Speaker of the House of Delegates from among the membership of the House of Delegates, one representing rural interests and one representing urban interests, for terms concurrent with the term for which they have been elected to office; two members shall be appointed by the Senate Committee on Privileges and Elections, one representing rural interests and one representing urban interests, from among the membership of the Senate for terms concurrent

with the term for which they have been elected to office; and eleven members shall be appointed by the Governor, subject to confirmation by the General Assembly, as follows: (i) five designated representatives of public health agencies, such as the American Cancer Society, American Heart Association, American Lung Association of Virginia, Medical Society of Virginia, Virginia Thoracic Society, and the Virginia Nurses Association; (ii) four health professionals in the fields of oncology, cardiology, pulmonary medicine, and pediatrics; and (iii) two youths.

All appointments shall be for four years. Vacancies in the membership of the Board shall be filled by appointment of the entity initially making the appointment for the unexpired portion of the term. No member shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the members shall enter upon the performance of their duties.

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

C. Members of the Board shall receive compensation for their services at the rate provided in § 2.1-20.3 and shall receive reimbursement for actual expenses incurred in the performance of their duties on behalf of the Board. Such compensation and expenses shall be paid from the Fund.

D. Members of the Board and employees of the Foundation shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) and may be removed from office for inefficiency, neglect of duty or misconduct in the manner set forth therein.

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

§ 32.1-358. Appointment of director.

The Foundation shall employ a director, who shall also be the secretary of the Board. The director shall be appointed by and serve at the pleasure of the Board. The director shall administer, manage and direct the affairs and business of the Foundation in accordance with the provisions of this chapter, subject to the policies, control and direction of the Board. The Board may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Board may delegate to one or more of its agents or employees such administrative duties as it may deem proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

§ 32.1-359. Duties of the Board.

The Board shall perform the following duties:

1. Establish specific criteria and procedures governing decisions by the Foundation to distribute the moneys in the Fund to entities for use in restricting the use of tobacco products by minors;

2. Establish requirements that every recipient of money distributed from the Fund establish and maintain policies that restrict the use of tobacco products by minors, as provided in § 32.1-361;

3. Evaluate the proposals for the use of the assets of the Fund in accordance with the criteria established by the Board and the provisions of this chapter; and

4. Evaluate the implementation and results of all efforts receiving support from the Foundation.

§ 32.1-360. Virginia Tobacco Settlement Fund.

The Foundation shall create a fund to be known as the Virginia Tobacco Settlement Fund. The Fund shall consist of the moneys deposited to the Fund pursuant to subsection B of § 9-383. The Fund shall also consist of any moneys appropriated by the General Assembly to the Foundation, grants and donations received by the Foundation, and other moneys received by the Foundation and designated for deposit in the Fund. Moneys in the Fund shall be used for the purposes of restricting the use of tobacco products by minors, including but not limited to educational and awareness programs on the health effects of tobacco use on minors and enforcement of laws restricting the distribution of tobacco products to minors.

§ 32.1-361. Use of moneys distributed.

Any recipient of any moneys distributed from the Fund pursuant to this chapter for the purpose of restricting the use of tobacco products by minors shall be required, as a condition precedent to the release of such moneys to such entity, to establish and maintain policies restricting or preventing tobacco use by minors. The Foundation shall (i) establish criteria for determining whether an entity's policies support the restriction of tobacco use by minors and (ii) monitor the distribution of such moneys to ensure that the recipients of such funds are in compliance with the provisions of this section.

§ 32.1-362. Audit.

The accounts of the Foundation shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 32.1-363. Forms of accounts and records.

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

§ 32.1-364. Reports to the Governor and General Assembly.

The Foundation shall submit a report annually to the Governor and the General Assembly. The report shall include information regarding programs supported by the Foundation and expenditures from the Fund.

§ 32.1-365. Public purpose; exemption from taxation.

A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, knowledge, convenience and prosperity.

B. The Foundation will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Foundation and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Foundation under the provisions of this chapter.

2. That in order to implement the purpose of the Master Settlement Agreement that portions of the proceeds of the Master Settlement Agreement be expended on (i) alleviating the adverse economic effects of the Agreement on the growers of tobacco and the communities that are dependent on tobacco and (ii) tobacco use control and prevention programs, the Governor shall notify the administrator or other entity responsible for distributing payments to parties to the Master Settlement Agreement with tobacco product manufacturers dated November 23, 1998, that sixty percent of the amount of all payments that would otherwise be paid to the Commonwealth under Phase I of the Master Settlement Agreement shall instead be paid to the Tobacco Indemnification and Community Revitalization Commission created by this act. If the payment of such amounts to the Tobacco Indemnification and Community Revitalization Commission requires the negotiation of an amendment to the Master Settlement Agreement, the Governor shall use his best efforts to do so.