

13102361D

HOUSE BILL NO. 1998

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 2.2-2670, 2.2-4025, 24.2-411.2, 30-133, 51.5-134, 58.1-609.10, 58.1-611.1, 58.1-3833, 58.1-3840, 60.2-608.2, 63.2-100, 63.2-505, 63.2-505.1, 63.2-505.2, 63.2-517, 63.2-523, 63.2-524, 63.2-526, 63.2-527, 63.2-608, 63.2-616, 63.2-801, 65.2-101, 65.2-500, 65.2-502, and 65.2-512 of the Code of Virginia, relating to the food stamp program.*

Patron—Sickles

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2670, 2.2-4025, 24.2-411.2, 30-133, 51.5-134, 58.1-609.10, 58.1-611.1, 58.1-3833, 58.1-3840, 60.2-608.2, 63.2-100, 63.2-505, 63.2-505.1, 63.2-505.2, 63.2-517, 63.2-523, 63.2-524, 63.2-526, 63.2-527, 63.2-608, 63.2-616, 63.2-801, 65.2-101, 65.2-500, 65.2-502, and 65.2-512 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2670. Powers and duties of the Council; Virginia Workforce Network created.

A. The Council shall undertake the following actions to implement and foster workforce training, exclusive of the career and technical education programs provided through and administered by the public school system:

1. Provide policy advice to the Governor on workforce and workforce development issues;
2. Provide policy direction to local workforce investment boards;
3. Identify current and emerging statewide workforce needs of the business community;
4. Forecast and identify training requirements for the new workforce;
5. Create strategies that will match trained workers with available jobs;
6. Provide an annual report to the Governor concerning its actions and determinations under subdivisions 1 through 5;
7. Create procedures, guidelines, and directives applicable to local workforce investment boards and the operation of one-stops, as necessary and appropriate to carry out the purposes of this article; and
8. Perform any act or function in accordance with the purposes of this article.

B. The Council shall establish at least two committees as follows: one committee to accomplish the aims of the WIA and one committee to focus on high-technology workforce training needs.

C. The Council and the Governor's cabinet secretaries shall assist the Governor in complying with the provisions of the WIA and ensuring the coordination and effectiveness of programs and providers comprising elements of the Virginia Workforce Network.

D. The Council shall assist the Governor in the following areas with respect to workforce development: development of the WIA State Plan; development and continuous improvement of a statewide workforce development system; development of linkages to ensure coordination and nonduplication among programs and activities; review of local plans; designation of local areas; development of local discretionary allocation formulas; development and continuous improvement of comprehensive state performance measures including, without limitation, performance measures reflecting the degree to which one-stop centers provide comprehensive services with all mandatory partners and the degree to which local workforce investment boards have obtained funding from sources other than the WIA; preparation of the annual report to the U.S. Secretary of Labor; development of a statewide employment statistics system; development of incentive grant applications; and development of a statewide system of one-stop centers that provide comprehensive workforce services to employers, employees, and job seekers.

The Council shall share information regarding its meetings and activities with the public.

E. Each local workforce investment board shall develop and submit to the Governor and the Virginia Workforce Council an annual workforce demand plan for its workforce investment board area based on a survey of local and regional businesses that reflects the local employers' needs and requirements and the availability of trained workers to meet those needs and requirements; designate or certify one-stop operators; identify eligible providers of youth activities; identify eligible providers of intensive services if unavailable at one-stop; develop a budget; conduct local oversight of one-stop operators and training providers in partnership with its local chief elected official; negotiate local performance measures, including incentives for good performance and penalties for inadequate performance; assist in developing statewide employment statistics; coordinate workforce investment activities with economic development strategies and the annual demand plan, and develop linkages among them; develop and enter into

INTRODUCED

HB1998

59 memoranda of understanding with one-stop partners and implement the terms of such memoranda;
60 promote participation by the private sector; actively seek sources of financing in addition to WIA funds;
61 report performance statistics to the Virginia Workforce Council; and certify local training providers in
62 accordance with criteria provided by the Virginia Workforce Council.

63 Each local workforce investment board shall share information regarding its meetings and activities
64 with the public.

65 F. Each chief local elected official shall consult with the Governor regarding designation of local
66 workforce investment areas; appoint members to the local board in accordance with state criteria; serve
67 as the local grant recipient unless another entity is designated in the local plan; negotiate local
68 performance measures with the Governor; ensure that all mandated partners are active participants in the
69 local workforce investment board and one-stop center and collaborate with the local workforce
70 investment board on local plans and program oversight.

71 G. Each local workforce investment board shall develop and enter into a memorandum of
72 understanding concerning the operation of the one-stop delivery system in the local area with each entity
73 that carries out any of the following programs or activities:

- 74 1. Programs authorized under Title I of the WIA;
 - 75 2. Programs authorized under the Wagner-Peyser Act (29 U.S.C. § 49 et seq.);
 - 76 3. Adult education and literacy activities authorized under Title II of the WIA;
 - 77 4. Programs authorized under Title I of the Rehabilitation Act of 1973 (29 U.S.C. § 720 et seq.);
 - 78 5. Welfare-to-work programs authorized under § 403 (a) (5) of the Social Security Act (42 U.S.C.
79 § 603 (a) (5));
 - 80 6. Activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. § 3056 et seq.);
 - 81 7. Postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and
82 Applied Technology Education Act (20 U.S.C. § 2301 et seq.);
 - 83 8. Activities authorized under chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. § 2271 et
84 seq.);
 - 85 9. Activities pertaining to employment and training programs for veterans authorized under chapter
86 41 of title 38, United States Code;
 - 87 10. Employment and training activities carried out under the Community Services Block Grant Act
88 (42 U.S.C. § 9901 et seq.);
 - 89 11. Employment and training activities carried out by the United States Department of Housing and
90 Urban Development;
 - 91 12. Programs authorized under Title 60.2, in accordance with applicable federal law;
 - 92 13. Workforce development activities or work requirements of the Temporary Assistance to Needy
93 Families (TANF) program known in Virginia as the Virginia Initiative for Employment, not Welfare
94 (VIEW) program established pursuant to § 63.2-608; and
 - 95 14. The workforce development activities or work programs authorized under the ~~Food Stamp Act of~~
96 ~~1977~~ *Food and Nutrition Act of 2008* (7 U.S.C. § 2011 et seq.).
- 97 H. The Governor shall be responsible for the coordination of the Virginia Workforce Network and
98 the implementation of the WIA.

99 **§ 2.2-4025. Exemptions operation of this article; limitations.**

100 A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts
101 by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the
102 internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test,
103 or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case
104 in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a
105 trial de novo in any court.

106 B. The provisions of this article, however, shall apply to case decisions regarding the grant or denial
107 of Temporary Assistance for Needy Families, Medicaid, ~~food stamps~~ or *Supplemental Nutrition*
108 *Assistance Program benefits*, general relief, auxiliary grants, or state-local hospitalization. However, no
109 appeal may be brought regarding the adequacy of standards of need and payment levels for public
110 assistance and social services programs. Notwithstanding the provisions of § 2.2-4027, the review shall
111 be based solely upon the agency record, and the court shall be limited to ascertaining whether there was
112 evidence in the agency record to support the case decision of the agency acting as the trier of fact. If
113 the court finds in favor of the party complaining of agency action, the court shall remand the case to the
114 agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or
115 state, upon which the action of the agency was based shall not be subject to review by the court. No
116 intermediate relief shall be granted under § 2.2-4028.

117 **§ 24.2-411.2. State-designated voter registration agencies.**

118 A. The following agencies are designated as voter registration agencies in compliance with the
119 National Voter Registration Act (42 U.S.C. § 1973gg et seq.) and shall provide voter registration
120 opportunities at their state, regional, or local offices, depending upon the point of service:

1. Agencies whose primary function is to provide public assistance, including agencies that provide benefits under the Temporary Assistance for Needy Families program; Special Supplemental Food Program for Women, Infants, and Children; Medicaid program; or ~~Food Stamps program~~ *Supplemental Nutrition Assistance Program*;

2. Agencies whose primary function is to provide state-funded programs primarily engaged in providing services to persons with disabilities;

3. Armed Forces recruitment offices; and

4. The regional offices of the Department of Game and Inland Fisheries and the offices of the Virginia Employment Commission in the Northern Virginia Planning District 8.

B. The Secretary of the State Board of Elections, with the assistance of the Office of the Attorney General, shall compile and maintain a list of the specific agencies covered by subdivisions A 1 and A 2 that, in the legal opinion of the Attorney General, must be designated to meet the requirements of the National Voter Registration Act. The Secretary of the State Board of Elections shall notify each agency of its designation and thereafter notify any agency added to or deleted from the list.

C. At each voter registration agency, the following services shall be made available on the premises of the agency:

1. Distribution of mail voter registration forms provided by the State Board of Elections;

2. Assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance; and

3. Receipt of completed voter registration application forms.

D. A voter registration agency, which provides service or assistance in conducting voter registration, shall make the following services available on the premises of the agency:

1. Distribution with each application for its service or assistance, or upon admission to a facility or program, and with each recertification, readmission, renewal, or change of address form, of a voter registration application prescribed by the State Board of Elections that complies with the requirements of the National Voter Registration Act (42 U.S.C. § 1973gg et seq.).

2. Provision, as part of the voter registration process, of a form that includes:

a. The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"

b. If the agency provides public assistance, the statement: "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

c. Boxes for the applicant to check to indicate whether the applicant would like to register, declines to register to vote, or is already registered (failure to check any box being deemed to constitute a declination to register for purposes of subdivision 2 a), together with the statement (in close proximity to the boxes and in prominent type): "IF YOU DO NOT CHECK ANY BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

d. The statement: "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek help or accept help is yours. You may fill out the application form in private."

e. The statement: "If you believe that someone has interfered with your right to register or to decline to register to vote, or your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with the State Board of Elections." The statement shall include the address and telephone number of the State Board.

f. The following statement accompanying the form which features prominently in boldface capital letters: "WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500."

3. Provision to each applicant who does not decline to register to vote of the same degree of assistance with regard to the completion of the voter registration application as is provided by the office with regard to the completion of its own applications, unless the applicant refuses assistance.

E. If a voter registration agency designated under subsection A of this section provides services to a person with a disability at the person's home, the agency shall provide the voter registration services as provided for in this section.

F. A person who provides services at a designated voter registration agency shall not:

1. Seek to influence an applicant's political preference;

2. Display any material indicating the person's political preference or party allegiance;

3. Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; or

4. Disclose, except as authorized by law for official use, the social security number, or any part

thereof, of any applicant for voter registration.

Any person who is aggrieved by a violation of this subsection may provide written notice of the violation to the State Board of Elections. The Board shall be authorized to cooperate with the agency to resolve the alleged violation. Nothing contained in this subsection shall prohibit an aggrieved person from filing a complaint in accordance with § 24.2-1019 against a person who commits any election law offense enumerated in §§ 24.2-1000 through 24.2-1016.

G. A completed voter registration application shall be transmitted as directed by the State Board of Elections not later than five business days after the date of receipt.

H. Each state-designated voter registration agency shall maintain such statistical records on the number of applications to register to vote as requested by the State Board of Elections.

§ 30-133. Duties and powers generally.

A. The Auditor of Public Accounts shall audit all the accounts of every state department, officer, board, commission, institution or other agency handling any state funds. In the performance of such duties and the exercise of such powers he may employ the services of certified public accountants, provided the cost thereof shall not exceed such sums as may be available out of the appropriation provided by law for the conduct of his office.

B. The Auditor of Public Accounts shall review the information required in § 2.2-1501 to determine that state agencies are providing and reporting appropriate information on financial and performance measures, and the Auditor shall review the accuracy of the management systems used to accumulate and report the results. The Auditor shall report annually to the General Assembly the results of such audits and make recommendations, if indicated, for new or revised accountability or performance measures to be implemented for the agencies audited.

C. The Auditor of Public Accounts shall prepare, by November 1, a summary of the results of all of the audits and other oversight responsibilities performed for the most recently ended fiscal year. The Auditor of Public Accounts shall present this summary to the Senate Finance, House Appropriations and House Finance Committees on the day the Governor presents to the General Assembly the Executive Budget in accordance with §§ 2.2-1508 and 2.2-1509 or at the direction of the respective Chairman of the Senate Finance, House Appropriations or House Finance Committees at one of their committee meetings prior to the meeting above.

D. As part of his normal oversight responsibilities, the Auditor of Public Accounts shall incorporate into his audit procedures and processes a review process to ensure that the Commonwealth's payments to counties, cities, and towns under Chapter 35.1 (§ 58.1-3523 et seq.) of Title 58.1 are consistent with the provisions of § 58.1-3524. The Auditor of Public Accounts shall report to the Governor and the Chairman of the Senate Finance Committee annually any material failure by a locality or the Commonwealth to comply with the provisions of Chapter 35.1 of Title 58.1.

E. The Auditor of Public Accounts when called upon by the Governor shall examine the accounts of any institution maintained in whole or in part by the Commonwealth and, upon the direction of the Comptroller, shall examine the accounts of any officer required to settle his accounts with him; and upon the direction of any other state officer at the seat of government he shall examine the accounts of any person required to settle his accounts with such officer.

F. Upon the written request of any member of the General Assembly, the Auditor of Public Accounts shall furnish the requested information and provide technical assistance upon any matter requested by such member.

G. In compliance with the provisions of the federal Single Audit Act Amendments of 1996, Public Law 104-156, the Joint Legislative Audit and Review Commission may authorize the Auditor of Public Accounts to audit biennially the accounts pertaining to federal funds received by state departments, officers, boards, commissions, institutions or other agencies.

H. 1. The Auditor of Public Accounts shall compile and maintain on its Internet website a searchable database providing certain state expenditure, revenue, and demographic information as described in this subsection. In maintaining the database, the Auditor of Public Accounts shall work with and coordinate his efforts with the Joint Legislative Audit and Review Commission in obtaining, summarizing, and compiling the information to avoid duplication of efforts. The database shall be updated each year by October 15 to provide the information required in this subsection for the 10 most recently ended fiscal years of the Commonwealth.

The online database shall be made available to citizens of the Commonwealth to allow public access to historical revenue collections and appropriations with related demographic information, to the extent that the information is available and provided to the Auditor of Public Accounts. All state departments, courts officers, boards, commissions, institutions, or other agencies of the Commonwealth shall furnish all information requested by the Auditor of Public Accounts and shall cooperate with him to the fullest extent.

For purposes of reporting information and implementing the database pursuant to this subsection, the Auditor of Public Accounts shall include all appropriated funds and other sources under the control of

state-supported institutions of higher education, except for the activity of private gifts, including endowment funds and unrestricted gifts referenced in § 23-9.2. The exclusion of this activity does not affect the public access to these records unless otherwise specifically exempted by law.

2. The database shall contain the following for each of the 10 most recently ended fiscal years of the Commonwealth:

a. Major categories of spending by each secretariat and for major agencies, to include for each agency and institution a register of all funds expended, showing vendor name, date of payment, amount, and a description of the type of expense, including also credit card purchases with the same information to the extent that the information exists;

b. The number of full-time state employees;

c. Total fiscal year revenues from state taxes, fees, and other charges, and total fiscal year revenues from state taxes, fees, and other charges computed on a per capita basis and as a percentage of personal income in the Commonwealth;

d. With regard to state taxes, fees, and other charges computed on a per capita basis and as a percentage of personal income, a comparison of such statistics for Virginia with the same statistics for other states;

e. Total fiscal year revenues from federal sources, including the major categories of spending for such revenues;

f. Total population and total population by various age groups including, but not limited to, school-age population and the population of persons 65 years of age and older;

g. Student enrollment in grades K through 12;

h. Enrollment in public institutions of higher education of the Commonwealth;

i. Enrollment in private institutions of higher education in the Commonwealth;

j. The annual prison population;

k. Virginia adjusted gross income and Virginia taxable income by various age groups;

l. The number of citizens in the Commonwealth receiving ~~food stamps~~ *Supplemental Nutrition Assistance Program benefits*;

m. The number of driver's licenses issued;

n. The number of registered motor vehicles;

o. The number of full-time private sector employees;

p. The number of households;

q. The number of prepaid tuition contracts outstanding pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 and the estimated total liability under such contracts;

r. Any state audit or report relating to the programs or activities of an agency;

s. Information on capital outlay payments including, but not limited to, project title, funding date, completion date, appropriations, year-to-date expenditures, and unexpended appropriations;

t. Annual bonded indebtedness that shall include, but not be limited to, the amount of the total original obligation stated in terms of principal and interest, the term of the obligation, the amounts of principal and interest previously paid to reduce the obligation, the balance remaining of the obligation, and any refinancing of the obligation; and

u. Other data as the Auditor deems appropriate relating to the Commonwealth of Virginia.

3. The Auditor of Public Accounts shall incorporate into the database the following additional elements as they become available through improved enterprise applications or other systems:

a. Commodities including, but not limited to, line item expenditures;

b. Virginia Performs data as it directly relates to funding actions or expenditures;

c. Descriptive purpose for funding action or expenditure;

d. Statute or act of General Assembly authorizing the issuance of bonds; and

e. Copies of actual grants and contracts.

4. By October 15 of each year, the Auditor shall also produce a paper copy or a computer file containing the information described in this subsection and shall distribute the copy or file to newspapers of general circulation in the Commonwealth. The distribution shall include the address of the Internet website for the searchable database.

I. As a part of audits conducted pursuant to subsection A, the Auditor of Public Accounts shall review compliance with requirements established pursuant to the provisions of § 2.2-519 and the requirements of the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

§ 51.5-134. Definitions.

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

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization, and adult day care.

"Educational services" includes information on the long-term care services provided by agencies of the Commonwealth, its localities, and private sector agencies, and public information as provided in

305 § 2.2-213.1.

306 "Health care services" includes home health care and community medical care.

307 "Housing services" includes community-based residential opportunities and retrofitting existing
308 housing as needed.

309 "Long-term care services" means socialization services, health care services, nutrition services, daily
310 living services, educational services, housing services, transportation services, and supportive services
311 that include (i) a balanced range of health, social, and supportive services to deliver long-term care
312 services to older persons with chronic illnesses or functional impairments; (ii) meaningful choice,
313 increased functional ability, and affordability as determining factors in defining long-term care service
314 needs, which needs shall be determined by a uniform system for comprehensively assessing the needs
315 and preferences of individuals requiring such services; (iii) service delivery, consistent with the needs
316 and preferences of individuals requiring such services, that occurs in the most independent, least
317 restrictive, and most appropriate living situation possible; and (iv) opportunities for self-care and
318 independent living, as appropriate, by encouraging all long-term care programs to maximize self-care
319 and independent living within the mainstream of life in the community.

320 "Nutrition services" includes home-delivered meals, ~~food stamps~~, and congregate meals, and
321 *Supplemental Nutrition Assistance Program benefits*.

322 "Socialization services" includes telephone reassurance, friendly visiting, and congregate meals.

323 "Supportive services" includes adult protective services, mental health and developmental services,
324 counseling services, and legal aid.

325 "Transportation services" includes readily available access to public transportation or area coordinated
326 paratransit systems.

327 **§ 58.1-609.10. Miscellaneous exemptions.**

328 The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606
329 shall not apply to the following:

330 1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption.
331 "Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil
332 by an individual purchaser for other than business, commercial or industrial purposes. The Tax
333 Commissioner shall establish by regulation a system for use by dealers in classifying individual
334 purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil.
335 Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any
336 portion of such purchase for domestic use may, between the first day of the first month and the fifteenth
337 day of the fourth month following the year of purchase, apply for a refund of the tax paid on the
338 domestic use portion.

339 2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted
340 an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption
341 pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food,
342 prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and
343 meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

344 3. Tangible personal property for future use by a person for taxable lease or rental as an established
345 business or part of an established business, or incidental or germane to such business, including a
346 simultaneous purchase and taxable leaseback.

347 4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside
348 of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be
349 deemed to be delivery of goods for use or consumption outside of the Commonwealth.

350 5. Tangible personal property purchased with ~~food coupons issued~~ *benefits made available* by the
351 United States Department of Agriculture under the ~~Food Stamp~~ *Supplemental Nutrition Assistance*
352 Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants,
353 and Children.

354 6. Tangible personal property purchased for use or consumption in the performance of maintenance
355 and repair services at Nuclear Regulatory Commission-licensed nuclear power plants located outside the
356 Commonwealth.

357 7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original, revised,
358 edited, reformatted or copied documents, including but not limited to documents stored on or transmitted
359 by electronic media, to its client or to third parties in the course of the professional's rendition of
360 services to its clientele.

361 8. School lunches sold and served to pupils and employees of schools and subsidized by government;
362 school textbooks sold by a local board or authorized agency thereof; and school textbooks sold for use
363 by students attending a college or other institution of learning, when sold (i) by such institution of
364 learning or (ii) by any other dealer, when such textbooks have been certified by a department or
365 instructor of such institution of learning as required textbooks for students attending courses at such
366 institution.

9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in his professional practice, regardless of whether such practice is organized as a sole proprietorship, partnership, or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to cosmetics.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501(c) (3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a

428 Department of Medical Assistance Services provider agreement.

429 18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an
430 individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide
431 variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and
432 olive pits.

433 19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies
434 the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from
435 taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an
436 organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

437 **§ 58.1-611.1. Rate of tax on sales of food purchased for human consumption.**

438 A. The tax imposed by §§ 58.1-603 and 58.1-604 on food purchased for human consumption shall be
439 levied and distributed as follows:

440 1. From January 1, 2000, through midnight on June 30, 2005, the tax rate on such food shall be
441 three percent of the gross sales price. The revenue from the tax shall be distributed as follows: (i) the
442 revenue from the tax at the rate of one-half percent shall be distributed as provided in subsection A of
443 § 58.1-638, (ii) the revenue from the tax at the rate of one percent shall be distributed as provided in
444 subsections B, C and D of § 58.1-638, and (iii) the revenue from the tax at the rate of one and one-half
445 percent shall be used for general fund purposes.

446 2. On and after July 1, 2005, the tax rate on such food shall be one and one-half percent of the gross
447 sales price. The revenue from the tax shall be distributed as follows: (i) the revenue from the tax at the
448 rate of one-half percent shall be distributed as provided in subsection A of § 58.1-638 and (ii) the
449 revenue from the tax at the rate of one percent shall be distributed as provided in subsections B, C and
450 D of § 58.1-638.

451 B. The provisions of this section shall not affect the imposition of tax on food purchased for human
452 consumption pursuant to §§ 58.1-605 and 58.1-606.

453 C. As used in this section, "food purchased for human consumption" has the same meaning as "food"
454 defined in the ~~Food Stamp Act of 1977~~ *Food and Nutrition Act of 2008*, 7 U.S.C. § 2012, as amended,
455 and federal regulations adopted pursuant to that Act, except it shall not include seeds and plants which
456 produce food for human consumption. For the purpose of this section, "food purchased for human
457 consumption" shall not include food sold by any retail establishment where the gross receipts derived
458 from the sale of food prepared by such retail establishment for immediate consumption on or off the
459 premises of the retail establishment constitutes more than 80 percent of the total gross receipts of that
460 retail establishment, including but not limited to motor fuel purchases, regardless of whether such
461 prepared food is consumed on the premises of that retail establishment. For purposes of this section,
462 "retail establishment" means each place of business for which any "dealer," as defined in § 58.1-612, is
463 required to apply for and receive a certificate of registration pursuant to § 58.1-613.

464 **§ 58.1-3833. County food and beverage tax.**

465 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
466 consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four
467 percent of the amount charged for such food and beverages. Such tax shall not be levied on food and
468 beverages sold through vending machines or by: (i) boardinghouses that do not accommodate transients;
469 (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part
470 of their compensation when no charge is made to the employee; (iv) volunteer fire departments and
471 rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or
472 benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a
473 fundraising activity, the gross proceeds of which are to be used by such church, religious body or
474 organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v)
475 churches that serve meals for their members as a regular part of their religious observances; (vi) public
476 or private elementary or secondary schools, colleges, and universities to their students or employees;
477 (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to
478 patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped,
479 battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences
480 with restaurants, not open to the public, where meals are served and fees are charged for such food and
481 beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a)
482 when used or consumed and paid for by the Commonwealth, any political subdivision of the
483 Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable
484 organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or
485 at central locations; or (c) provided by private establishments that contract with the appropriate agency
486 of the Commonwealth to offer food, food products, or beverages for immediate consumption at
487 concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central
488 locations.

489 Grocery stores and convenience stores selling prepared foods ready for human consumption at a

delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the ~~Food Stamp Act of 1977~~ *Food and Nutrition Act of 2008*, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

§ 58.1-3840. Certain excise taxes permitted.

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds. No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) food and beverages sold through vending machines or on any tangible personal property purchased with ~~food coupons issued~~ *benefits made available* by the United States Department of Agriculture under the ~~Food Stamp Program~~ *Supplemental Nutrition Assistance Program* or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. No such taxes on meals may be imposed when sold or provided by: (a) restaurants, as such term is defined in subdivision 9 a of § 35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a

551 fundraising activity, the gross proceeds of which are to be used by such church, religious body or
552 organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c)
553 churches that serve meals for their members as a regular part of their religious observances; (d) public
554 or private elementary or secondary schools, or public or private colleges and universities, to their
555 students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other
556 extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged,
557 infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment
558 complexes or residences with restaurants, not open to the public, where meals are served and fees are
559 charged for such food and beverages and are included in rental fees.

560 Also, the tax shall not be levied on meals: (a) when used or consumed and paid for by the
561 Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided
562 by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind,
563 handicapped, or needy persons in their homes, or at central locations; or (c) provided by private
564 establishments that contract with the appropriate agency of the Commonwealth to offer food, food
565 products, or beverages for immediate consumption at concession prices to elderly, infirm, blind,
566 handicapped, or needy persons in their homes or at central locations.

567 In addition, as set forth in § 51.5-98, no blind person operating a vending stand or other business
568 enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on
569 property acquired and used by the United States for any military or naval purpose shall be required to
570 collect and remit meals taxes.

571 B. Notwithstanding any other provision of this section, no city or town shall levy any tax under this
572 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
573 consumption or food purchased for human consumption as "food" is defined in the ~~Food Stamp Act of~~
574 *1977 Food and Nutrition Act of 2008*, 7 U.S.C. § 2012, as amended, and federal regulations adopted
575 pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar,
576 prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory
577 sealed beverages.

578 C. Any city or town that is authorized to levy a tax on admissions may levy the tax on admissions
579 paid for any event held at facilities that are not owned by the city or town at a lower rate than the rate
580 levied on admissions paid for any event held at its city- or town-owned civic centers, stadiums and
581 amphitheatres.

582 D. [Expired.]

583 **§ 60.2-608.2. Withholding of benefits; overissuance of SNAP benefits.**

584 A. Any individual filing a new claim for unemployment compensation shall, at the time of filing
585 such claim, disclose whether or not the individual owes an uncollected overissuance of ~~food stamp~~
586 ~~coupons~~ *Supplemental Nutrition Assistance Program benefits*, as such is defined in ~~§ 13(e) -(1) of the~~
587 ~~Food Stamp Act of 1977~~, 7 U.S.C. § 2022(c) (1). If any such individual discloses that he or she owes
588 ~~food stamp obligations~~ *an uncollected overissuance* and is determined to be eligible for unemployment
589 compensation, the Commission shall notify the state ~~food stamp~~ agency enforcing such obligation that
590 the individual has been determined to be eligible for unemployment compensation.

591 B. The Commission shall deduct and withhold the following from any unemployment compensation
592 payable to an individual who owes an uncollected overissuance:

593 1. The amount specified by the individual to the Commission to be deducted and withheld under this
594 subsection, if neither the provisions of subdivision 2 nor the provisions of subdivision 3 of this
595 subsection are applicable; or

596 2. The amount, if any, determined pursuant to an agreement submitted to the Commission by the
597 state ~~food stamp~~ agency ~~under § -1 3(e) -(3) -(A) of the Food Stamp Act of 1977 enforcing the~~
598 *obligation, pursuant to* 7 U.S.C. § 2022 (c) (3) (A); or

599 3. Any amount otherwise required to be so deducted and withheld from such unemployment
600 compensation pursuant to ~~§- 13(e) (3) (B) of the Food Stamp Act of 1977~~, 7 U.S.C. § 2022(c) (3) (B).

601 C. Any amount deducted and withheld under subsection B shall be paid by the Commission to the
602 appropriate state ~~food stamp~~ agency *enforcing the obligation*.

603 D. Any amount deducted and withheld under subsection B shall for all purposes be treated as if it
604 were paid to the individual as unemployment compensation and paid by such individual to the state ~~food~~
605 ~~stamp~~ agency *enforcing the obligation* as repayment of the individual's uncollected overissuance.

606 E. For purposes of subsections A through D of this section, the term "unemployment compensation"
607 means any compensation payable under this title including amounts payable by the Commission pursuant
608 to an agreement under any federal law providing for compensation, assistance, or allowances with
609 respect to unemployment.

610 F. The provisions of this section shall be applicable only if appropriate arrangements have been made
611 for reimbursement by the state ~~food stamp~~ agency *enforcing an obligation for repayment of uncollected*
612 *overissuance of Supplemental Nutrition Assistance Program benefits* for the administrative costs incurred

by the Commission under this subsection which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

§ 63.2-100. (Effective July 1, 2013) Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three

674 adults.

675 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
676 for himself or is not being provided services necessary to maintain his physical and mental health and
677 that the failure to receive such necessary services impairs or threatens to impair his well-being.
678 However, no adult shall be considered neglected solely on the basis that such adult is receiving religious
679 nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
680 treatment or care is performed in good faith and in accordance with the religious practices of the adult
681 and there is a written or oral expression of consent by that adult.

682 "Adult protective services" means services provided by the local department that are necessary to
683 protect an adult from abuse, neglect or exploitation.

684 "Assisted living care" means a level of service provided by an assisted living facility for adults who
685 may have physical or mental impairments and require at least a moderate level of assistance with
686 activities of daily living.

687 "Assisted living facility" means any congregate residential setting that provides or coordinates
688 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
689 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
690 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
691 of Health or the Department of Behavioral Health and Developmental Services, but including any
692 portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or
693 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
694 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
695 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
696 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the
697 facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled
698 that provides no more than basic coordination of care services and is funded by the U.S. Department of
699 Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing
700 Development Authority. Included in this definition are any two or more places, establishments or
701 institutions owned or operated by a single entity and providing maintenance or care to a combined total
702 of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general
703 supervision and oversight of the physical and mental well-being of an aged, infirm or disabled
704 individual.

705 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
706 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
707 these benefits except for excess income.

708 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

709 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
710 parent(s) by previous adoption.

711 "Board" means the State Board of Social Services.

712 "Child" means any natural person under 18 years of age.

713 "Child day center" means a child day program offered to (i) two or more children under the age of
714 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
715 more children at any location.

716 "Child day program" means a regularly operating service arrangement for children where, during the
717 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
718 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

719 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
720 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
721 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or
722 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
723 serve as or maintain a child-placing agency, shall not be required to be licensed.

724 "Child-protective services" means the identification, receipt and immediate response to complaints
725 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
726 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
727 and his family when the child has been found to have been abused or neglected or is at risk of being
728 abused or neglected.

729 "Child support services" means any civil, criminal or administrative action taken by the Division of
730 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
731 collect child support, or child and spousal support.

732 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
733 family day home, family day system, or independent foster home.

734 "Children's residential facility" means any facility, child-caring institution, or group home that is
735 maintained for the purpose of receiving children separated from their parents or guardians for full-time

care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning from foster care to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years

797 of age or older who was committed or entrusted to a local board of social services, child welfare
798 agency, or private child-placing agency. "Independent living services" may also mean services and
799 activities provided to a person who was in foster care on his 18th birthday and has not yet reached the
800 age of 21 years. Such services shall include counseling, education, housing, employment, and money
801 management skills development, access to essential documents, and other appropriate services to help
802 children or persons prepare for self-sufficiency.

803 "Independent physician" means a physician who is chosen by the resident of the assisted living
804 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an
805 owner, officer, or employee or as an independent contractor with the residence.

806 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster
807 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
808 entity authorized to make such placements in accordance with the laws of the foreign country under
809 which it operates.

810 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care
811 placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of
812 the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
813 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
814 action of any court.

815 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

816 "Local board" means the local board of social services representing one or more counties or cities.

817 "Local department" means the local department of social services of any county or city in this
818 Commonwealth.

819 "Local director" means the director or his designated representative of the local department of the
820 city or county.

821 "Merit system plan" means those regulations adopted by the Board in the development and operation
822 of a system of personnel administration meeting requirements of the federal Office of Personnel
823 Management.

824 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
825 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

826 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the
827 aged, blind and disabled; medical assistance; energy assistance; ~~food stamps~~ *Supplemental Nutrition*
828 *Assistance Program benefits*; employment services; child care; and general relief.

829 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services
830 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for
831 a home and community-based waiver program, including an independent physician contracting with the
832 Department of Medical Assistance Services to complete the uniform assessment instrument for residents
833 of assisted living facilities, or any hospital that has contracted with the Department of Medical
834 Assistance Services to perform nursing facility pre-admission screenings.

835 "Registered family day home" means any family day home that has met the standards for voluntary
836 registration for such homes pursuant to regulations adopted by the Board and that has obtained a
837 certificate of registration from the Commissioner.

838 "Residential living care" means a level of service provided by an assisted living facility for adults
839 who may have physical or mental impairments and require only minimal assistance with the activities of
840 daily living. The definition of "residential living care" includes the services provided by independent
841 living facilities that voluntarily become licensed.

842 "Social services" means foster care, adoption, adoption assistance, child-protective services, domestic
843 violence services, or any other services program implemented in accordance with regulations adopted by
844 the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of
845 Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14
846 of Title 51.5 provided by local departments of social services in accordance with regulations and under
847 the supervision of the Commissioner for Aging and Rehabilitative Services.

848 "Special order" means an order imposing an administrative sanction issued to any party licensed
849 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A
850 special order shall be considered a case decision as defined in § 2.2-4001.

851 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the
852 Department through which a relative can receive monthly cash assistance for the support of his eligible
853 children.

854 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the
855 Temporary Assistance for Needy Families program for families in which both natural or adoptive
856 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for
857 Employment Not Welfare (VIEW) participation under § 63.2-609.

858 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social

Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-505. Determining the amount of public assistance.

The Board shall adopt regulations governing the amount of public assistance persons receive under the provisions of this subtitle. In making such regulations, the Board shall consider significant differences in living costs in various counties and cities and, unless otherwise precluded by law, shall establish or approve such variations in monetary public assistance standards for shelter allowance on a regional or local basis, as may be appropriate.

The amount of public assistance any person receives under the provisions of this subtitle shall be determined according to Board regulations with regard to (i) the property and income of the person and any support he receives from other sources, including from persons legally responsible for his support, and (ii) the average cost of providing public assistance statewide. It shall be sufficient to provide public assistance that, when added to all other income and support of the recipient (exclusive of that not to be taken into account as hereinafter provided), provides such person with a reasonable subsistence. In determining the income of and support available to a person, the amount of income required to be exempted by federal statute, or if the federal statute makes such exemption permissive, then such portion thereof as may be determined by the Board shall not be considered in determining the amount of assistance any person may receive under this subtitle.

Any amounts received by a person pursuant to a settlement agreement with, or judgment in a lawsuit brought against, a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" shall be disregarded in determining the amount of public assistance such person may receive from state public assistance programs and from federal public assistance programs to the extent permitted by federal law or regulation, and such amounts shall not be subject to a lien or be available for reimbursement to the Commonwealth or any local department for public assistance, notwithstanding the provisions of § 63.2-409.

Any individual or family applying for or receiving public assistance under the Temporary Assistance for Needy Families Program, medical assistance services for low-income families with children *program*, ~~food stamp~~ *Supplemental Nutrition Assistance Program*, or energy assistance programs, to the extent permitted by federal law and regulation, may have or establish one savings or other investment account per assistance unit not to exceed \$5,000. Any such account, including any interest earned thereon or appreciation in value thereof, shall be exempt from consideration in any calculation under any specified public assistance program as long as no funds are withdrawn from the account. The State Board shall promulgate regulations permitting the withdrawal of funds from the account for purposes related to self-sufficiency, disregarding the funds withdrawn for such purposes in any calculation under any specified public assistance program, and establishing penalties for amounts withdrawn for any other purposes or other misuse of these funds.

§ 63.2-505.1. Transitional Supplemental Nutrition Assistance Program benefits.

To the extent permitted by federal law, the Department shall provide transitional ~~food stamp~~ *Supplemental Nutrition Assistance Program (SNAP)* benefits for a period of not more than five months after the date on which Temporary Assistance for Needy Families (TANF) cash assistance is terminated. However, no household shall be eligible for transitional ~~food stamp~~ *SNAP* benefits if TANF cash assistance was terminated because all children in the assistance unit were removed from the home as a result of a child protective services investigation.

§ 63.2-505.2. Eligibility for Supplemental Nutrition Assistance Program benefits; drug-related felonies.

A person who is otherwise eligible to receive ~~food stamp~~ *Supplemental Nutrition Assistance Program* benefits shall be exempt from the application of section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, and shall not be denied such assistance solely because he has been convicted of a felony offense of possession of a controlled substance in violation of § 18.2-250, provided such person is complying with, or has already complied with, all obligations imposed by the criminal court, is actively engaged in or has completed a substance abuse treatment program, participates in periodic drug screenings, and any other obligations as determined by the Department.

§ 63.2-517. Right of appeal to Commissioner.

Any applicant or recipient aggrieved by any decision of a local board in granting, denying, changing or discontinuing public assistance, may, within thirty days after receiving written notice of such decision, appeal therefrom to the Commissioner.

Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for a review of the same by the Commissioner.

The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review by an applicant for or recipient of public assistance

920 concerning any decision of a local board. The Commissioner shall establish an appeals review panel to
921 review administrative hearing decisions upon the request of either the applicant or the local board. Such
922 panel shall determine if any changes are needed in the conduct of future hearings, or to policy and
923 procedures related to the issue of the administrative appeal, and periodically report its findings to the
924 Commissioner.

925 Any applicant or recipient aggrieved by any decision of a local board concerning ~~food stamps~~
926 *Supplemental Nutrition Assistance Program benefits* may appeal to the Commissioner in accordance with
927 federal law and regulation.

928 **§ 63.2-523. Unauthorized use of Supplemental Nutrition Assistance Program benefits, electronic**
929 **benefit transfer cards, and energy assistance prohibited; penalties.**

930 Whoever knowingly and with intent to defraud transfers, acquires, alters, traffics in or uses, or aids
931 or abets another person in transferring, acquiring, altering, trafficking in, using, or possessing ~~food~~
932 ~~stamps~~ *Supplemental Nutrition Assistance Program benefits*, electronic benefit transfer cards or other
933 devices subject to federal reserve system regulations regarding Electronic Fund Transfers, 12 CFR
934 § 205.1 et seq., or benefits from energy assistance programs, or possesses ~~food coupons~~, authorization to
935 purchase cards, electronic benefit transfer cards or other devices subject to federal reserve system
936 regulations regarding Electronic Fund Transfers, 12 CFR § 205.1 et seq., or benefits from energy
937 assistance programs in any manner not authorized by law is guilty of larceny.

938 A violation of this section may be prosecuted either in the county or city where the public assistance
939 was granted or in the county or city where the violation occurred.

940 **§ 63.2-524. Denial of benefits upon finding of fraudulent acts.**

941 Any individual applying for or receiving benefits under the federal ~~Food Stamp~~ program
942 *Supplemental Nutrition Assistance Program* or the Temporary Assistance for Needy Families program
943 may be denied such benefits in accordance with federal law if such person is found by a court or
944 pursuant to an administrative hearing to have intentionally (i) made a false or misleading statement or
945 misrepresented, concealed or withheld facts, or (ii) committed any act intended to mislead, misrepresent,
946 conceal or withhold facts or propound a falsity, for the purpose of establishing or maintaining eligibility
947 for such benefits.

948 The Board is authorized to adopt regulations governing conduct of administrative hearings and denial
949 of benefits authorized by this section.

950 **§ 63.2-526. Statewide fraud control program.**

951 A. The Department shall establish a statewide fraud control program to ensure that fraud prevention
952 and investigation are pursued throughout the Commonwealth. The Board shall adopt regulations to
953 implement the provisions of this section.

954 B. Each local department shall establish fraud prevention and investigation units only insofar as
955 money is appropriated therefor, which shall be staffed with sufficient qualified personnel to fulfill the
956 regulations adopted by the Board. Solely for the purposes of obtaining motor vehicle licensing and
957 registration information from entities within and without the Commonwealth, each local department
958 fraud prevention and investigation unit shall be deemed to be a criminal justice agency as defined in
959 § 9.1-101. The local departments may contract with other local departments to share a fraud prevention
960 and investigation unit and may contract with private entities to perform fraud investigation. Any private
961 entity performing fraud investigations shall comply with the requirements of § 30-138 and shall not be
962 deemed to be a criminal justice agency.

963 C. The duties of fraud units may include but shall not be limited to (i) developing methods to
964 prevent the fraudulent receipt of public assistance administered by the local board and (ii) investigating
965 whether persons who receive public assistance through the local board are receiving it fraudulently. The
966 fraud unit shall provide whatever assistance is necessary to attorneys for the Commonwealth in
967 prosecuting cases involving fraud.

968 D. There is hereby created in the state treasury a special nonreverting fund to be known as the Fraud
969 Recovery Special Fund, hereafter referred to as "the Fund." The Fund shall be established on the books
970 of the Comptroller. All overpayment moneys collected or recovered by local departments related to ~~food~~
971 ~~stamp~~ *the Supplemental Nutrition Assistance Program*, Temporary Assistance for Needy Families, and
972 other federal benefit programs administered by the Department net of any refunds due the federal
973 government shall be paid into the state treasury and credited to the Fund, except as prohibited by federal
974 law or regulation. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to
975 the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose
976 of funding state and local fraud control programs.

977 Funding for local and state fraud control activities shall be comprised of (i) general funds
978 appropriated for this activity, (ii) any federal funds available for this purpose, and (iii) balances in the
979 Fund.

980 E. Local departments shall apply to the Commissioner for reimbursement from the Fund for the local
981 share of direct costs. The Commissioner shall authorize reimbursements to the local departments from

the Fund as provided in the general appropriation act. To receive or continue receiving reimbursements from the Fund, the local departments shall administer their fraud and investigation units in compliance with Board regulations. The number of local fraud workers for which the state will provide reimbursement in each locality shall be determined by Board regulations.

§ 63.2-527. Notice of earned income tax credit.

The Department shall provide notice regarding the availability of the federal earned income tax credit authorized in § 32 of the Internal Revenue Code and the state earned income tax credit authorized in subdivision B 2 of § 58.1-339.8 to all recipients of Temporary Assistance for Needy Families pursuant to Chapter 6 (§ 63.2-600 et seq.), ~~food stamps~~ *Supplemental Nutrition Assistance Program benefits* pursuant to § 63.2-801, or medical assistance pursuant to § 32.1-325 who had earned income in the prior tax year based on information available through the Virginia Employment Commission and, according to information made available by the Virginia Department of Taxation, either did not file federal or state income taxes or filed taxes and did not claim the federal or state earned income tax credit. Notice shall be mailed to recipients annually and shall include information on the qualifying income levels, the amount of credit available, the process for applying for the credit, and the availability of assistance in applying for the credit.

§ 63.2-608. Virginia Initiative for Employment Not Welfare (VIEW).

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW) to reduce long-term dependence on welfare, to emphasize personal responsibility and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills and prior training of a participant.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate in work activities while receiving TANF, earned-income disregards to reduce disincentives to work, and a limit on TANF financial assistance.

VIEW shall require all able-bodied recipients of TANF who do not meet an exemption to participate in a work activity. VIEW shall require eligible TANF recipients to participate in unsubsidized, partially subsidized or fully subsidized employment or other allowable TANF work activity as defined by federal law and enter into an agreement of personal responsibility.

B. To the maximum extent permitted by federal law, and notwithstanding other provisions of Virginia law, the Department and local departments may, through applicable procurement laws and regulations, engage the services of public and private organizations to operate VIEW and to provide services incident to such operation.

C. All VIEW participants shall be under the direction and supervision of a case manager.

D. The Department shall ensure that participants are assigned to one of the following work activities within 90 days after the approval of TANF assistance:

1. Unsubsidized private-sector employment;

2. Subsidized employment, as follows:

a. The Department shall conduct a program in accordance with this section that shall be known as the Full Employment Program (FEP). FEP replaces TANF with subsidized employment. Persons not able to find unsubsidized employment who are otherwise eligible for TANF may participate in FEP unless exempted by this chapter. FEP shall assign participants to subsidized wage-paying private-sector jobs designed to increase the participants' self-sufficiency and improve their competitive position in the workforce.

b. Participants in FEP shall be placed in full-time employment when appropriate and shall be paid by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher. At no point shall a participant's spendable income received from wages and tax credits be less than the value of TANF received prior to the work placement.

c. Every employer subject to the Virginia unemployment insurance tax shall be eligible for assignment of FEP participants, but no employer shall be required to utilize such participants. Employers shall ensure that jobs made available to FEP participants are in conformity with § 3304 (a) (5) of the Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

d. FEP employers shall:

(i) Endeavor to make FEP placements positive learning and training experiences;

(ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;

(iii) Pay wages to participants at the same rate that they are paid to other employees performing the same type of work and having similar experience and employment tenure;

(iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the same basis that they are provided to other employees performing the same type of work and having

1043 similar employment experience and tenure;

1044 (v) Maintain health, safety and working conditions at or above levels generally acceptable in the

1045 industry and no less than those in which other employees perform the same type of work;

1046 (vi) Provide workers' compensation coverage for participants;

1047 (vii) Encourage volunteer mentors from among their other employees to assist participants in

1048 becoming oriented to work and the workplace; and

1049 (viii) Sign an agreement with the local department outlining the employer requirements to participate

1050 in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in

1051 the event the employer violates FEP rules.

1052 e. As a condition of FEP participation, employers shall be prohibited from discriminating against any

1053 person, including program participants, on the basis of race, color, sex, national origin, religion, age, or

1054 disability;

1055 3. Part-time or temporary employment;

1056 4. Community work experience, as follows:

1057 a. The Department and local departments shall work with other state, regional and local agencies and

1058 governments in developing job placements that serve a useful public purpose as provided in § 482 (f) of

1059 the Social Security Act, as amended. Placements shall be selected to provide skills and serve a public

1060 function. VIEW participants shall not displace regular workers.

1061 b. The number of hours per week for participants shall be determined by combining the total dollar

1062 amount of TANF and ~~food stamps~~ *Supplemental Nutrition Assistance Program benefits* and dividing by

1063 the minimum wage with a maximum of a work week of 32 hours, of which up to 12 hours of

1064 employment-related education and training may substitute for work experience employment; or

1065 5. Any other allowable TANF work activity as defined by federal law.

1066 E. Notwithstanding the provisions of subsections A and D, if a local department determines that a

1067 VIEW participant is in need of job skills and would benefit from immediate job skills training, it may

1068 place the participant in a general educational development (GED) program or a career and technical

1069 education program targeted at skills required for particular employment opportunities. Eligible

1070 participants include those with problems related to obtaining and retaining employment, such as

1071 participants (i) with less than a high school education, (ii) whose reading or math skills are at or below

1072 the eighth grade level, (iii) who have not retained a job for a period of at least six months during the

1073 prior two years, or (iv) who are in a treatment program for a substance abuse problem or are receiving

1074 services through a family violence treatment program. The VIEW participant may continue in a GED

1075 program or career and technical education program for as long as the local department determines he is

1076 progressing satisfactorily and to the extent permitted by the Personal Responsibility and Work

1077 Opportunity Reconciliation Act of 1996 (P.L. 104-193), as amended.

1078 F. Participants may be reevaluated after a period determined by the local department and reassigned

1079 to another work component. In addition, the number of hours worked may be reduced by the local

1080 department so that a participant may complete additional training or education to further his

1081 employability.

1082 G. Local departments shall be authorized to sanction parents up to the full amount of the TANF

1083 grant for noncompliance, unless good cause exists.

1084 H. VIEW participants shall not be assigned to projects that require that they travel unreasonable

1085 distances from their homes or remain away from their homes overnight without their consent.

1086 Any injury to a VIEW participant arising out of and in the course of community work experience

1087 shall be covered by the participant's existing Medicaid coverage. If a community work experience

1088 participant is unable to work due to such an accident, his status shall be reviewed to determine whether

1089 he is eligible for an exemption from the limitation on TANF financial assistance.

1090 A community work experience participant who becomes incapacitated for 30 days or more shall be

1091 eligible for TANF financial assistance for the duration of the incapacity, if otherwise eligible.

1092 The Board shall adopt regulations providing for the accrual of paid sick leave or other equivalent

1093 mechanism for community work experience participants.

1094 **§ 63.2-616. Provision of public assistance and social services.**

1095 Local departments may combine community resources to assist the families of persons who may be

1096 in need because of the limitations on TANF financial assistance and may arrange for appropriate care of

1097 needy families where the limitation on TANF financial assistance as a result of the birth of an additional

1098 child or the two-year limit on TANF financial assistance is executed. Public assistance and social

1099 services may be provided that include, but are not limited to, help for families in obtaining donated food

1100 and clothing, continuation of ~~food stamps~~ *Supplemental Nutrition Assistance Program benefits* for adults

1101 and children who are otherwise eligible, child care, and Medicaid coverage for adults and children who

1102 are otherwise eligible for Medicaid.

1103 **§ 63.2-801. Supplemental Nutrition Assistance Program.**

1104 A. The Board is authorized, ~~in accordance with the federal Food Stamp Act,~~ to implement a ~~food~~

stamp program of supplemental nutrition assistance in accordance with the federal Food and Nutrition Act of 2008 (7 U.S.C. § 2011 et seq.), in which each political subdivision in the Commonwealth shall participate. Such program shall be administered in conformity with the Board regulations.

B. The Board shall, to the extent authorized by federal law and regulations, establish broad-based categorical eligibility for supplemental nutrition assistance, which shall include eligibility for households in which all members receive or are authorized to receive non-cash benefits under the Temporary Assistance for Needy Families program, in accordance with 7 C.F.R. § 273.2(j)(ii).

§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

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

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

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

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Management shall be based upon the earnings of such persons from their primary employers.

"Award" means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

"Change in condition" means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded, suspended, or terminated which would affect the right to, amount of, or duration of compensation.

"Client company" means any person that enters into an agreement for professional employer services with a professional employer organization.

"Coemployee" means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

"Commission" means the Virginia Workers' Compensation Commission as well as its former designation as the Virginia Industrial Commission.

"Employee" means:

1166 1. a. Every person, including aliens and minors, in the service of another under any contract of hire
1167 or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose
1168 employment is not in the usual course of the trade, business, occupation or profession of the employer
1169 or (ii) as otherwise provided in subdivision 2 of this definition.

1170 b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or
1171 instruction outside of regular working hours and off the job, so long as the training or instruction is
1172 related to his employment and is authorized by his employer.

1173 c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid
1174 or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of
1175 their commander.

1176 Income benefits for members of the National Guard or Naval Militia shall be terminated when they
1177 are able to return to their customary civilian employment or self-employment. If they are neither
1178 employed nor self-employed, those benefits shall terminate when they are able to return to their military
1179 duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian
1180 employment or self-employment remains unable to perform his military duties and thereby suffers loss
1181 of military pay which he would otherwise have earned, he shall be entitled to one day of income
1182 benefits for each unit training assembly or day of paid training which he is unable to attend.

1183 d. Members of the Virginia Defense Force.

1184 e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on
1185 duty or in training.

1186 f. Except as provided in subdivision 2 of this definition, all officers and employees of the
1187 Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile
1188 and domestic relations district courts and general district courts; and (iii) secretaries and administrative
1189 assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and
1190 compensated as provided in the general appropriation act, who shall be deemed employees of the
1191 Commonwealth.

1192 g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal
1193 corporation or political subdivision of the Commonwealth.

1194 h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including
1195 president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the
1196 charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability
1197 company elected or appointed in accordance with the articles of organization or operating agreement of
1198 the limited liability company.

1199 i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county
1200 and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth,
1201 clerks of circuit courts and their deputies, officers and employees, and electoral board members
1202 appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities,
1203 counties and towns in which their services are employed and by whom their salaries are paid or in
1204 which their compensation is earnable. However, notwithstanding the foregoing provision of this
1205 subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or
1206 town in which their services are employed and by whom their salaries are paid or in which their
1207 compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid
1208 outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the
1209 Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.

1210 j. Members of the governing body of any county, city or town in the Commonwealth, whenever
1211 coverage under this title is extended to such members by resolution or ordinance duly adopted.

1212 k. Volunteers, officers and employees of any commission or board of any authority created or
1213 controlled by a local governing body, or any local agency or public service corporation owned, operated
1214 or controlled by such local governing body, whenever coverage under this title is authorized by
1215 resolution or ordinance duly adopted by the governing board of any county, city, town, or any political
1216 subdivision thereof.

1217 l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or
1218 rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or
1219 reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and
1220 rescue organizations, volunteer members of regional hazardous materials emergency response teams,
1221 volunteer members of community emergency response teams, and volunteer members of medical reserve
1222 corps, who shall be deemed employees of (i) the political subdivision or state institution of higher
1223 education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue
1224 squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy
1225 sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization,
1226 regional hazardous materials emergency response team, community emergency response team, or medical
1227 reserve corps is located if the governing body of such political subdivision or state institution of higher

education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

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

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

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

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

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

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

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

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

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

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

s. ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* benefit recipients participating in the work experience component of the ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* Employment and Training ~~Program~~ *program*, who shall be deemed employees of the Commonwealth for the purposes of this title.

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

2. "Employee" shall not mean:

a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

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

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

1289 d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such
1290 individual is excluded from taxation by the Federal Unemployment Tax Act.

1291 e. Casual employees.

1292 f. Domestic servants.

1293 g. Farm and horticultural laborers, unless the employer regularly has in service more than three
1294 full-time employees.

1295 h. Employees of any person, firm or private corporation, including any public service corporation,
1296 that has regularly in service less than three employees in the same business within this Commonwealth,
1297 unless such employees and their employers voluntarily elect to be bound by this title. However, this
1298 exemption shall not apply to the operators of underground coal mines or their employees. An executive
1299 officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects
1300 coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of
1301 this subdivision.

1302 i. Employees of any common carrier by railroad engaging in commerce between any of the several
1303 states or territories or between the District of Columbia and any of the states or territories and any
1304 foreign nation or nations, and any person suffering injury or death while he is employed by such carrier
1305 in such commerce. This title shall not be construed to lessen the liability of any such common carrier or
1306 to diminish or take away in any respect any right that any person so employed, or the personal
1307 representative, kindred or relation, or dependent of such person, may have under the act of Congress
1308 relating to the liability of common carriers by railroad to their employees in certain cases, approved
1309 April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

1310 j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce.
1311 However, this title shall not be construed to lessen the liability of such common carriers or take away or
1312 diminish any right that any employee or, in case of his death, the personal representative of such
1313 employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

1314 k. Except as provided in subdivision 1 of this definition, a member of a volunteer fire-fighting,
1315 lifesaving or rescue squad when engaged in activities related principally to participation as a member of
1316 such squad whether or not the volunteer continues to receive compensation from his employer for time
1317 away from the job.

1318 l. Except as otherwise provided in this title, noncompensated employees and noncompensated
1319 directors of corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States
1320 Code (Internal Revenue Code of 1954).

1321 m. Any person performing services as a sports official for an entity sponsoring an interscholastic or
1322 intercollegiate sports event or any person performing services as a sports official for a public entity or a
1323 private, nonprofit organization which sponsors an amateur sports event. For the purposes of this
1324 subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person
1325 who is a neutral participant in a sports event. This shall not include any person, otherwise employed by
1326 an organization or entity sponsoring a sports event, who performs services as a sports official as part of
1327 his regular employment.

1328 n. Any person who suffers an injury on or after July 1, 2012, for which there is jurisdiction under
1329 either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its
1330 extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq. However, this title shall not
1331 be construed to eliminate or diminish any right that any person or, in the case of the person's death, his
1332 personal representative, may have under either the Longshore and Harbor Workers' Compensation Act,
1333 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et
1334 seq.

1335 "Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any
1336 individual, firm, association or corporation, or the receiver or trustee of the same, or the legal
1337 representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire
1338 company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an
1339 employer under this title. If the employer is insured, it includes his insurer so far as applicable.

1340 "Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer,
1341 elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers
1342 elected or appointed in accordance with the articles of organization or operating agreement of a limited
1343 liability company. However, such term does not include noncompensated officers of corporations exempt
1344 from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of
1345 1954).

1346 "Filed" means hand delivered to the Commission's office in Richmond or any regional office
1347 maintained by the Commission; sent by telegraph, electronic mail or other means of electronic
1348 transmission approved by the Commission or facsimile transmission; or posted at any post office of the
1349 United States Postal Service by certified or registered mail. Filing by first-class mail, telegraph,
1350 electronic mail or other means of electronic transmission or facsimile transmission shall be deemed

completed only when the document or other material transmitted reaches the Commission or its designated agent.

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

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or

2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

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

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

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

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

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

§ 65.2-500. Compensation for total incapacity; computation of average wage; exclusion of AmeriCorps members, certain Supplemental Nutrition Assistance Program Employment and Training Program participants, and certain Temporary Assistance for Needy Families participants.

A. Except as provided in subsections E, F and G, when the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to 66 2/3 percent of his average weekly wages, with a minimum not less than 25 percent and a maximum of not more than 100 percent of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee. Any farm employer who continues to furnish benefits while the employee is incapacitated shall be given credit for the value of such benefits so furnished when computing the compensation due the employee.

B. For the purpose of this section the average wage in the Commonwealth shall be determined by the Commission as follows: On or before January 1 of each year, the total wages, excluding wages of United States government employees, reported on contribution reports to the Virginia Employment Commission for the 12-month period ending the preceding June 30 shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for that 12-month period by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest dollar. The average weekly wage as so determined shall be applicable for the full period during which income benefits are payable, when the date of occurrence of injury or of disablement in the case of disease falls within the year commencing with the July 1 following the date of determination.

C. The minimum or the maximum weekly income benefits shall not be changed for any year unless the computation herein provided results in an increase or decrease of \$2 or more, raised to the next even dollar in the level of the minimum or the maximum weekly income benefits.

D. The weekly compensation on account of total and permanent incapacity as defined by subsection C of § 65.2-503 shall continue for the lifetime of the injured employee without limit as to total amount.

E. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive weekly compensation for total incapacity, whether permanent or temporary, regardless of whether the

1412 injury results in death.

1413 F. ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* benefit recipients participating in the
1414 work experience component of the ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* Employment
1415 and Training ~~Program~~ *program* as defined in subdivision s of § 65.2-101 shall not be eligible to receive
1416 weekly compensation for total incapacity, whether permanent or temporary, regardless of whether the
1417 injury results in death.

1418 G. Temporary Assistance for Needy Families recipients participating in the work experience
1419 component of the Virginia Initiative for Employment Not Welfare Program as defined in subdivision t
1420 of § 65.2-101 shall not be eligible to receive weekly compensation for total incapacity, whether
1421 permanent or temporary, regardless of whether the injury results in death.

1422 **§ 65.2-502. Compensation for partial incapacity; exclusion of AmeriCorps members, certain**
1423 **Supplemental Nutrition Assistance Program Employment and Training Program participants, and**
1424 **certain Temporary Assistance for Needy Families participants.**

1425 A. Except as otherwise provided in § 65.2-503 or 65.2-510, or as provided in subsections B, C and
1426 D, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to
1427 be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation
1428 equal to $66 \frac{2}{3}$ percent of the difference between his average weekly wages before the injury and the
1429 average weekly wages which he is able to earn thereafter, but not more than 100 percent of the average
1430 weekly wage of the Commonwealth as defined in § 65.2-500. For purposes of calculating an injured
1431 employee's post-injury average weekly wage, the following rules shall apply to commissioned
1432 employees, self-employed income, and income derived from an employer in which the injured worker or
1433 their immediate family has an ownership interest: if the period of partial incapacity exists for 13 weeks
1434 or less, the injured employee's post-injury average weekly wage shall be computed by dividing the
1435 employee's total earnings during the first two weeks of partial incapacity by two, subject to retroactive
1436 adjustments as provided hereinafter. If the period of partial incapacity exists for more than 13 weeks, the
1437 injured employee's post-injury average weekly wage for each 13-week interval shall be computed by
1438 dividing the employee's total earnings during the period of partial incapacity by the number of weeks
1439 included in such period; however, if an injured employee's period of partial incapacity ends after the
1440 close of a 13-week interval but before the close of the next 13-week interval, the injured employee's
1441 post-injury average weekly wage for such portion of the subsequent 13-week interval shall be calculated
1442 by dividing the employee's total earnings during the period of partial incapacity by the number of weeks
1443 included in such period. When an injured employee is under a continuing award of temporary partial
1444 benefits, the employer or the employee shall be entitled to seek a retroactive adjustment of the
1445 temporary partial rate for the 90 days preceding the application seeking such adjustment of the
1446 temporary partial rate computed in accordance with the above method of calculation. Any resulting
1447 amount due to the employee shall be paid to the employee. Any resulting credit due to the employer
1448 may be offset dollar for dollar against future compensation benefits due the injured employee, subject to
1449 the provisions of § 65.2-520. The employee is required pursuant to § 65.2-712 to immediately disclose
1450 increases in his earnings. For all other employments, the employee's post-injury average weekly wage
1451 may, in the Commission's discretion, be calculated using the preceding formula or a week-to-week
1452 calculation. In case the partial incapacity begins after a period of total incapacity, the latter period shall
1453 be deducted from the maximum period herein allowed for partial incapacity. However, the employer
1454 shall not be required to pay, or cause to be paid, compensation under this section to any injured
1455 employee not eligible for lawful employment; nor shall any such injured employee not eligible for
1456 lawful employment who is partially incapacitated be entitled during partial incapacity to receive
1457 temporary total benefits under § 65.2-500.

1458 B. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive
1459 weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the
1460 injury results in death.

1461 C. ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* benefit recipients participating in the
1462 work experience component of the ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* Employment
1463 and Training ~~Program~~ *program* as defined in subdivision s of § 65.2-101 shall not be eligible to receive
1464 weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the
1465 injury results in death.

1466 D. Temporary Assistance for Needy Families recipients participating in the work experience
1467 component of the Virginia Initiative for Employment Not Welfare Program as defined in subdivision t
1468 of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether
1469 permanent or temporary, regardless of whether the injury results in death.

1470 **§ 65.2-512. Compensation to dependents of an employee killed; burial expenses.**

1471 A. Except as provided in subsections F, G and H, if death results from the accident within nine
1472 years, the employer shall pay, or cause to be paid, compensation in weekly payments equal to $66 \frac{2}{3}$
1473 percent of the employee's average weekly wages, but not more than 100 percent of the average weekly

wage of the Commonwealth as defined in § 65.2-500 nor less than 25 percent of the average weekly wage as defined therein:

1. To those persons presumed to be wholly dependent upon the deceased employee as set forth in subdivisions A 1, A 2, and A 3 of § 65.2-515, for a period of 500 weeks from the date of injury; or

2. If there are no total dependents pursuant to subdivision A 1, A 2, or A 3 of § 65.2-515, to those persons presumed to be wholly dependent as set forth in subdivision A 4 of § 65.2-515, and to those determined to be wholly dependent in fact, for a period of 400 weeks from the date of injury; or

3. If there are no total dependents, to partial dependents in fact, for a period of 400 weeks from the date of injury.

B. The employer shall also pay burial expenses not exceeding \$10,000 and reasonable transportation expenses for the deceased not exceeding \$1,000.

C. Benefits shall be divided equally among total dependents, to the exclusion of partial dependents. If there are no total dependents, benefits shall be divided among partial dependents according to the dependency of each upon the earnings of the employee at the time of the injury, in the proportion that partial dependency bears to total dependency.

D. If benefits are terminated as to any member of a class herein, that member's share shall be divided among the remaining members of the class proportionately according to their dependency.

E. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments but shall not continue for a period longer than specified in subsection A of this section.

F. No benefits shall be paid pursuant to this section to the dependents of an AmeriCorps member as defined in subdivision r of § 65.2-101.

G. No benefits shall be paid pursuant to subsections A, C, D or E to the dependents of a ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* benefit recipient participating in the work experience component of the ~~Food Stamp~~ *Supplemental Nutrition Assistance Program* Employment and Training ~~Program~~ *program* as defined in subdivision s of § 65.2-101.

H. No benefits shall be paid pursuant to subsections A, C, D or E to the dependents of a Temporary Assistance for Needy Families recipient participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program as defined in subdivision t of § 65.2-101.