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## HOUSE BILL NO. 216

Offered January 8, 2014

Prefiled December 27, 2013

A *BILL to amend and reenact §§ 1-404, 2.2-221, 2.2-507, 2.2-509.1, 2.2-1119, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.7, 2.2-3711, 2.2-3802, 2.2-4024, 2.2-4345, 3.2-1010, 4.1-100, 4.1-103, 4.1-103.1, 4.1-111, 4.1-119, 4.1-121, 4.1-124, 4.1-128, 4.1-209.1, 4.1-212.1, 4.1-325, 9.1-101, 9.1-102, 9.1-400, 9.1-500, 9.1-801, 15.2-2288.3, 18.2-57, 18.2-246.6, 18.2-308, 18.2-308.03, 18.2-308.012, 18.2-371.2, 19.2-81, 19.2-386.21, 19.2-389, 22.1-206, 23-7.4:1, 32.1-357, 33.1-252, 48-17.1, 51.1-212, 58.1-3, 58.1-3651, 59.1-148.3, 65.2-402, and 65.2-402.1 of the Code of Virginia and to amend and reenact the fourth enactment of Chapters 870 and 932 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding in Chapter 22 of Title 2.2 an article numbered 11, consisting of sections numbered 2.2-2351 through 2.2-2364; and to repeal §§ 4.1-101 and 4.1-102 of the Code of Virginia, relating to alcoholic beverage control; creation of the Virginia Alcoholic Beverage Control Authority.*

Patron—Albo

Referred to Committee on General Laws

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

1. That §§ 1-404, 2.2-221, 2.2-507, 2.2-509.1, 2.2-1119, 2.2-2696, 2.2-2818, 2.2-2905, 2.2-3705.3, 2.2-3705.7, 2.2-3711, 2.2-3802, 2.2-4024, 2.2-4345, 3.2-1010, 4.1-100, 4.1-103, 4.1-103.1, 4.1-111, 4.1-119, 4.1-121, 4.1-124, 4.1-128, 4.1-209.1, 4.1-212.1, 4.1-325, 9.1-101, 9.1-102, 9.1-400, 9.1-500, 9.1-801, 15.2-2288.3, 18.2-57, 18.2-246.6, 18.2-308, 18.2-308.03, 18.2-308.012, 18.2-371.2, 19.2-81, 19.2-386.21, 19.2-389, 22.1-206, 23-7.4:1, 32.1-357, 33.1-252, 48-17.1, 51.1-212, 58.1-3, 58.1-3651, 59.1-148.3, 65.2-402, and 65.2-402.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 22 of Title 2.2 an article numbered 11, consisting of sections numbered 2.2-2351 through 2.2-2364, as follows:

**§ 1-404. Licensing sale of mixed alcoholic beverages on lands ceded to or owned by United States.**

The Virginia Alcoholic Beverage Control Board Authority may license the sale of mixed alcoholic beverages as defined in Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 at places primarily engaged in the sale of meals on lands ceded by the Commonwealth to the United States or owned by the government of the United States or any agency thereof provided that such lands are used as ports of entry or egress to and from the United States, and provided that such lands lie within or partly within the boundaries of any county in this Commonwealth which permits the lawful dispensing of mixed alcoholic beverages. The Board is hereby authorized to adopt rules and regulations governing the sale of such spirits, and to fix the fees for such licenses, within the limits fixed by general law.

**§ 2.2-221. Position established; agencies for which responsible.**

The position of Secretary of Public Safety (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: ~~Department of the Virginia Alcoholic Beverage Control Authority~~, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

**§ 2.2-507. Legal service in civil matters.**

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity.

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HB216

59 The soil and water conservation district directors or districts may request legal advice from local, public,  
60 or private sources; however, upon request of the soil and water conservation district directors or districts,  
61 the Attorney General shall provide legal service in civil matters for such district directors or districts.

62 B. The Attorney General may represent personally or through one of his assistants any of the  
63 following persons who are made defendant in any civil action for damages arising out of any matter  
64 connected with their official duties:

- 65 1. Members, agents, or employees of the *Virginia Alcoholic Beverage Control Board Authority*;
- 66 2. Agents inspecting or investigators appointed by the State Corporation Commission;
- 67 3. Agents, investigators, or auditors employed by the Department of Taxation;
- 68 4. Members, agents, or employees of the State Board of Behavioral Health and Developmental  
69 Services, the Department of Behavioral Health and Developmental Services, the State Board of Health,  
70 the State Department of Health, the Department of General Services, the State Board of Social Services,  
71 the Department of Social Services, the State Board of Corrections, the Department of Corrections, the  
72 State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the  
73 Department of Agriculture and Consumer Services;
- 74 5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation,  
75 or the Department of Rail and Public Transportation;
- 76 6. Persons employed by the Commissioner of Motor Vehicles;
- 77 7. Persons appointed by the Commissioner of Marine Resources;
- 78 8. Police officers appointed by the Superintendent of State Police;
- 79 9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
- 80 10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;
- 81 11. Staff members or volunteers participating in a court-appointed special advocate program pursuant  
82 to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
- 83 12. Any emergency medical service agency that is a licensee of the Department of Health in any  
84 civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for  
85 alleged errors or omissions in the discharge of his court-appointed duties;
- 86 13. Conservation officers of the Department of Conservation and Recreation; or
- 87 14. A person appointed by written order of a circuit court judge to run an existing corporation or  
88 company as the judge's representative, when that person is acting in execution of a lawful order of the  
89 court and the order specifically refers to this section and appoints such person to serve as an agent of  
90 the Commonwealth.

91 Upon request of the affected individual, the Attorney General may represent personally or through  
92 one of his assistants any basic or advanced emergency medical care attendant or technician possessing a  
93 valid certificate issued by authority of the State Board of Health in any civil matter in which a defense  
94 of immunity from liability is raised pursuant to § 8.01-225.

95 C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal  
96 service to be rendered by him or one of his assistants, he may employ special counsel for this purpose,  
97 whose compensation shall be fixed by the Attorney General. The compensation for such special counsel  
98 shall be paid out of the funds appropriated for the administration of the board, commission, division or  
99 department being represented or whose members, officers, inspectors, investigators, or other employees  
100 are being represented pursuant to this section. Notwithstanding any provision of this section to the  
101 contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties  
102 in which it, or any justice, is a party.

#### 103 **§ 2.2-509.1. Powers of investigators; enforcement of certain tobacco laws.**

104 Investigators with the Office of the Attorney General as designated by the Attorney General shall be  
105 authorized to seize cigarettes as defined in § 3.2-4200, which are sold, possessed, distributed,  
106 transported, imported, or otherwise held in violation of § 3.2-4207 or 58.1-1037. In addition, such  
107 investigators shall be authorized to accompany and participate with special agents of the *Virginia*  
108 *Alcoholic Beverage Control Board Authority* or other law-enforcement officials engaging in an  
109 enforcement action under § 3.2-4207 or 58.1-1037.

#### 110 **§ 2.2-1119. Cases in which purchasing through Division not mandatory.**

111 A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies and  
112 nonprofessional services through the Division shall not be mandatory in the following cases:

- 113 1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor  
114 and materials;
- 115 2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use  
116 of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by  
117 state funds;
- 118 3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be  
119 considered perishable within the meaning of this subdivision, unless so classified by the Division;
- 120 4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however,

this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

5. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board Authority; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

7. Printing of the records of the Supreme Court; and

8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

B. Telecommunications and information technology goods and services of every description shall be procured as provided by § 2.2-2012.

#### Article 11.

#### Virginia Alcoholic Beverage Control Authority.

#### **§ 2.2-2351. Short title; definitions; declaration of public purpose; Authority created.**

A. This article shall be known and may be cited as the "Virginia Alcoholic Beverage Control Authority Act of 2014."

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

"Authority" means the Virginia Alcoholic Beverage Control Authority.

"Board" means the board of directors of the Authority.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the stock of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such stock. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, which holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.

C. The General Assembly has determined that there exists in the Commonwealth a need to control the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth. Further, the General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.

D. To achieve the objective of subsection C, there is hereby created a political subdivision of the Commonwealth to be known as the Virginia Alcoholic Beverage Control Authority. The Authority's exercise of powers and duties conferred by this article and Title 4.1 shall be deemed the performance of an essential governmental function and a matter of public necessity for which public moneys may be spent. The Authority is vested with control of the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth, with plenary power to prescribe regulations and conditions under which alcoholic beverages are possessed, sold, transported, distributed, and delivered, so as to prevent any corrupt, incompetent, dishonest, or unprincipled practices and to promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.

E. Nothing contained in this article shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any other law of the Commonwealth, and this article supersedes all other laws in conflict herewith and is cumulative to such powers.

F. The provisions of this article shall be liberally construed to accomplish the purposes of this article and Title 4.1.

#### **§ 2.2-2352. Board of directors; membership; terms; compensation.**

A. The Authority shall be governed by a board of directors consisting of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of five years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § 2.2-2354.

B. Two directors shall be appointed for terms of four years, two for terms of three years, and one for a term of two years, from the effective date of their appointment; thereafter, the terms of members of the Board shall be six years. No member shall be eligible to serve more than two terms; however, after the expiration of the term of a member appointed to serve three years or less, two additional terms may

182 be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A  
183 person appointed to fill a vacancy may be appointed to serve two additional terms.

184 C. The Board shall elect from its membership a chairman and a vice-chairman, and shall also elect  
185 a secretary and a treasurer, who need not be members of the Board, and may also elect other  
186 subordinate officers, who need not be members of the Board. The Board may also form committees and  
187 advisory councils, which may include representatives who are not members of the Board, to undertake  
188 more extensive study and discussion of the issues before the Board. A majority of the Board shall  
189 constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership  
190 shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

191 D. Members of the Board shall receive \$50 for each day or part thereof spent in the performance of  
192 their duties and in addition shall be reimbursed for their reasonable expenses incurred therein.

193 E. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.)  
194 shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees  
195 of the Authority.

196 **§ 2.2-2353. Appointment, salary, and powers of Chief Executive Officer.**

197 A. The Authority shall be under the immediate supervision and direction of the Chief Executive  
198 Officer. The Board shall appoint the Chief Executive Officer, who shall not be a member of the Board,  
199 and who holds, at a minimum, a baccalaureate degree in business or a related field of study and  
200 possesses a minimum of five years of demonstrated experience or expertise in the direct management,  
201 supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive a salary  
202 as determined by the Board, including any performance bonuses or incentives as the Board deems  
203 advisable. The Chief Executive Officer shall be subject to a background check in accordance with  
204 § 2.2-2354. The Chief Executive Officer shall (i) serve at the pleasure of the Board, (ii) carry out the  
205 powers and duties conferred upon him by the Board, and (iii) meet performance measures or targets set  
206 by the Board.

207 B. The Chief Executive Officer shall devote his full time to the performance of his official duties and  
208 shall not be engaged in any other profession or occupation.

209 C. The Chief Executive Officer shall supervise and administer the operations of the Authority in  
210 accordance with this article and Title 4.1.

211 D. The Chief Executive Officer shall:

212 1. Exercise and perform such powers and duties as may be delegated to him by the Board or as may  
213 be conferred or imposed upon him by law;

214 2. Employ or retain such agents or employees subordinate to the Chief Executive Officer as may be  
215 necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the  
216 Board's approval;

217 3. Keep a true and full record of all proceedings of the Authority and preserve at the Authority's  
218 general office all books, documents, and papers of the Authority; and

219 4. Make recommendations to the Board for legislative and regulatory changes.

220 E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the  
221 Chief Executive Officer shall make any contribution to a candidate for office or office holder at the  
222 local or state level or cause such a contribution to be made on his behalf.

223 **§ 2.2-2354. Background investigations of Board members and Chief Executive Officer.**

224 All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a  
225 condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation  
226 for a national criminal history records search and to the Department of State Police for a Virginia  
227 criminal history records search. The Department of State Police shall be reimbursed by the Authority  
228 for the cost of investigations conducted pursuant to this section. No person who has been convicted of a  
229 felony or of a crime involving moral turpitude shall be appointed to the Board or appointed by the  
230 Board.

231 **§ 2.2-2355. Financial interests of Board, employees, and family members prohibited.**

232 No Board member or employee of the Authority and no spouse or immediate family member of any  
233 such member or employee shall have any financial interest, direct or indirect, in any licensee subject to  
234 the provisions of Title 4.1 or in any entity that has submitted an application for a license under Chapter  
235 2 (§ 4.1-200 et seq.) of Title 4.1. No Board member of the Authority and no spouse or immediate family  
236 member of a Board member shall make any contribution to a candidate for office or office holder at the  
237 local or state level or cause such a contribution to be made on his behalf.

238 **§ 2.2-2356. Powers of Authority.**

239 The Authority is granted all powers necessary or convenient for the carrying out of its statutory  
240 purposes, including the power to:

241 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;

242 2. Adopt, use, and alter at will a common seal;

243 3. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed,

tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; and to lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; and to lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; and to sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board;

4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;

5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including agreements with any person or federal agency;

6. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary and to fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.);

7. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

8. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed;

9. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;

10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43;

11. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;

12. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate; and

13. Do all acts and things necessary or convenient to carry out the powers granted to it by law and perform any act or carry out any function not inconsistent with state law that may be useful in carrying out the provisions of this article and Title 4.1.

#### **§ 2.2-2357. Employees of the Authority.**

A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, religion, color, sex, or national origin.

B. Notwithstanding any other provision of law, the Authority shall give preference to employees of the former Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the former Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the former Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee

305 *is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for*  
306 *the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.).*  
307 *Any employee who accepts employment with the Authority shall not be considered to be involuntarily*  
308 *separated from state employment and shall not be eligible for the severance benefits conferred by the*  
309 *provisions of the Workforce Transition Act.*

310 *C. Notwithstanding any other provision of law to the contrary, any person whose employment is*  
311 *transferred to the Authority as a result of this article and who is a member of any plan for providing*  
312 *health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) shall continue to be a member of*  
313 *such health insurance plan under the same terms and conditions as if no transfer had occurred.*

314 *D. Notwithstanding any other provision of law to the contrary, any person whose employment is*  
315 *transferred to the Authority as a result of this article and who is a member of the Virginia Retirement*  
316 *System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title*  
317 *51.1 shall continue to be a member of the Virginia Retirement System or other such authorized*  
318 *retirement plan under the same terms and conditions as if no transfer had occurred.*

319 **§ 2.2-2358. Moneys of Authority.**

320 *All moneys of the Authority, from whatever source derived, shall be paid in accordance with*  
321 *§ 4.1-116.*

322 **§ 2.2-2359. Forms of accounts and records; audit; annual report.**

323 *The accounts and records of the Authority showing the receipt and disbursement of funds from*  
324 *whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of*  
325 *Public Accounts or his legally authorized representatives shall annually examine the accounts and books*  
326 *of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on*  
327 *or before November 1 of each year. Such report shall contain the audited annual financial statements of*  
328 *the Authority for the year ending the previous June 30.*

329 **§ 2.2-2360. Public purpose.**

330 *The exercise of the powers granted by this article shall be in all respects for the benefit of the*  
331 *citizens of the Commonwealth and for the promotion of their safety, health, welfare, and convenience.*  
332 *No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to,*  
333 *any private individual, except that reasonable compensation may be paid for services rendered to or for*  
334 *the Authority affecting one or more of its purposes, and benefits may be conferred that are in*  
335 *conformity with said purposes, and no private individual shall be entitled to share in the distribution of*  
336 *any of the corporate assets on dissolution of the Authority.*

337 **§ 2.2-2361. Leases of property.**

338 *The Authority shall be exempt from the provisions of § 2.2-1149 and from any rules, regulations, and*  
339 *guidelines of the Division of Engineering and Buildings in relation to leases of real property into which*  
340 *it enters.*

341 **§ 2.2-2362. Exemptions from taxes or assessments.**

342 *The exercise of the powers granted by this article shall be in all respects for the benefit of the*  
343 *people of the Commonwealth, for the increase of their commerce and prosperity, and for the*  
344 *improvement of their living conditions, and as the undertaking of activities in the furtherance of the*  
345 *purposes of the Authority constitutes the performance of essential governmental functions, the Authority*  
346 *shall not be required to pay any taxes or assessments upon any property acquired or used by the*  
347 *Authority under the provisions of this article or upon the income therefrom, including sales and use*  
348 *taxes on the tangible personal property used in the operations of the Authority. The exemption granted*  
349 *in this section shall not be construed to extend to persons conducting on the premises of any property of*  
350 *the Authority businesses for which local or state taxes would otherwise be required.*

351 **§ 2.2-2363. Exemption of Authority from personnel and procurement procedures; information**  
352 **systems.**

353 *The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public*  
354 *Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power*  
355 *conferred under this article or Title 4.1. Nor shall the provisions of Chapter 20.1 (§ 2.2-2005 et seq.)*  
356 *apply to the Authority in the exercise of any power conferred under this article or Title 4.1.*

357 **§ 2.2-2364. Reversion to the Commonwealth.**

358 *Upon dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall*  
359 *revert to the Commonwealth.*

360 **§ 2.2-2696. Substance Abuse Services Council.**

361 *A. The Substance Abuse Services Council (the Council) is established as an advisory council, within*  
362 *the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is*  
363 *to advise and make recommendations to the Governor, the General Assembly, and the State Board of*  
364 *Behavioral Health and Developmental Services on broad policies and goals and on the coordination of*  
365 *the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.*

366 *B. The Council shall consist of 29 members. Four members of the House of Delegates shall be*

appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief ~~Operating Executive~~ Officer of the ~~Department of Virginia~~ Alcoholic Beverage Control ~~Authority~~; the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's appointments of the seven nonlegislative citizen members shall be staggered as follows: two members for a term of one year, three members for a term of two years, and two members for a term of three years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Behavioral Health and Developmental Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services;

2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Behavioral Health and Developmental Services.

#### **§ 2.2-2818. Health and related insurance for state employees.**

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through

39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.



For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a healthcare professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of

up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- a. The National Cancer Institute;
- b. An NCI cooperative group or an NCI center;
- c. The FDA in the form of an investigational new drug application;
- d. The federal Department of Veterans Affairs; or
- e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

Coverage under this subdivision shall apply only if:

- (1) There is no clearly superior, noninvestigational treatment alternative;
- (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will

be at least as effective as the noninvestigational alternative; and

(3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

17. Include coverage for biologically based mental illness.

For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

674 22. Notwithstanding any provision of this section to the contrary, every plan established in  
675 accordance with this section shall comply with the provisions of § 2.2-2818.2.

676 C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from  
677 such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be  
678 deposited in the employee health insurance fund, from which payments for claims, premiums, cost  
679 containment programs and administrative expenses shall be withdrawn from time to time. The funds of  
680 the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from  
681 all other funds of the Commonwealth, and shall be invested and administered solely in the interests of  
682 the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee,  
683 or agency shall use or authorize the use of such trust funds for any purpose other than as provided in  
684 law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight  
685 of the health insurance fund.

686 D. For the purposes of this section:

687 "Part-time state employees" means classified or similarly situated employees in legislative, executive,  
688 judicial or independent agencies who are compensated on a salaried basis and work at least 20 hours,  
689 but less than 32 hours, per week.

690 "Peer-reviewed medical literature" means a scientific study published only after having been critically  
691 reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal  
692 that has been determined by the International Committee of Medical Journal Editors to have met the  
693 Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical  
694 literature does not include publications or supplements to publications that are sponsored to a significant  
695 extent by a pharmaceutical manufacturing company or health carrier.

696 "Standard reference compendia" means:

- 697 1. American Hospital Formulary Service - Drug Information;  
698 2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or  
699 3. Elsevier Gold Standard's Clinical Pharmacology.

700 "State employee" means state employee as defined in § 51.1-124.3; employee as defined in  
701 § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301  
702 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and  
703 domestic relations, and district courts of the Commonwealth; and interns and residents employed by the  
704 School of Medicine and Hospital of the University of Virginia; and interns, residents, and employees of  
705 the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24; and  
706 *employees of the Virginia Alcoholic Beverage Control Authority as provided in § 2.2-2357.*

707 E. Provisions shall be made for retired employees to obtain coverage under the above plan,  
708 including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be  
709 obligated to, pay all or any portion of the cost thereof.

710 F. Any self-insured group health insurance plan established by the Department of Human Resource  
711 Management that utilizes a network of preferred providers shall not exclude any physician solely on the  
712 basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets  
713 the plan criteria established by the Department.

714 G. The plan shall include, in each planning district, at least two health coverage options, each  
715 sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be  
716 available in each planning district shall be a high deductible health plan that would qualify for a health  
717 savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

718 In each planning district that does not have an available health coverage alternative, the Department  
719 shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to  
720 provide coverage under the plan.

721 This subsection shall not apply to any state agency authorized by the Department to establish and  
722 administer its own health insurance coverage plan separate from the plan established by the Department.

723 H. Any self-insured group health insurance plan established by the Department of Human Resource  
724 Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary  
725 to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least  
726 annually, and updated as necessary in consultation with and with the approval of a pharmacy and  
727 therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists,  
728 (ii) physicians, and (iii) other health care providers.

729 If the plan maintains one or more drug formularies, the plan shall establish a process to allow a  
730 person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs  
731 in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable  
732 investigation and consultation with the prescriber, the formulary drug is determined to be an  
733 inappropriate therapy for the medical condition of the person. The plan shall act on such requests within  
734 one business day of receipt of the request.

735 Any plan established in accordance with this section shall be authorized to provide for the selection

of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by mail, common carrier, or delivery service. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.

I. Any plan established in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least 30 days before such reductions become effective.

K. No contract between a provider and any plan established in accordance with this section shall include provisions that require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

The Ombudsman shall:

1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

2. Answer inquiries from covered employees by telephone and electronic mail.

3. Provide to covered employees information concerning the state health plans.

4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

5. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in subdivision 4 and such additional information as he deems appropriate.

6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only in accordance with the federal Health Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. The plan established in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

797 P. Any plan established by the Department of Human Resource Management pursuant to this section  
798 shall provide that coverage under such plan for family members enrolled under a participating state  
799 employee's coverage shall continue for a period of at least 30 days following the death of such state  
800 employee.

801 Q. The plan established in accordance with this section that follows a policy of sending its payment  
802 to the covered employee or covered family member for a claim for services received from a  
803 nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies  
804 the covered employee of the responsibility to apply the plan payment to the claim from such  
805 nonparticipating provider, (ii) include this language with any such payment sent to the covered employee  
806 or covered family member, and (iii) include the name and any last known address of the  
807 nonparticipating provider on the explanation of benefits statement.

808 R. The Department of Human Resource Management shall report annually, by November 30 of each  
809 year, on cost and utilization information for each of the mandated benefits set forth in subsection B,  
810 including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established  
811 pursuant to this section. The report shall be in the same detail and form as required of reports submitted  
812 pursuant to § 38.2-3419.1, with such additional information as is required to determine the financial  
813 impact, including the costs and benefits, of the particular mandated benefit.

814 **§ 2.2-2905. Certain officers and employees exempt from chapter.**

815 The provisions of this chapter shall not apply to:

- 816 1. Officers and employees for whom the Constitution specifically directs the manner of selection;
- 817 2. Officers and employees of the Supreme Court and the Court of Appeals;
- 818 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either  
819 house thereof is required or not;
- 820 4. Officers elected by popular vote or by the General Assembly or either house thereof;
- 821 5. Members of boards and commissions however selected;
- 822 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of  
823 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and  
824 notaries public;
- 825 7. Officers and employees of the General Assembly and persons employed to conduct temporary or  
826 special inquiries, investigations, or examinations on its behalf;
- 827 8. The presidents and teaching and research staffs of state educational institutions;
- 828 9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
- 829 10. Student employees in institutions of learning and patient or inmate help in other state institutions;
- 830 11. Upon general or special authorization of the Governor, laborers, temporary employees, and  
831 employees compensated on an hourly or daily basis;
- 832 12. County, city, town, and district officers, deputies, assistants, and employees;
- 833 13. The employees of the Virginia Workers' Compensation Commission;
- 834 14. The officers and employees of the Virginia Retirement System;
- 835 15. Employees whose positions are identified by the State Council of Higher Education and the  
836 boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the  
837 Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of  
838 Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The  
839 Library of Virginia, and approved by the Director of the Department of Human Resource Management  
840 as requiring specialized and professional training;
- 841 16. Employees of the State Lottery Department;
- 842 17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
- 843 18. Employees of the Virginia Commonwealth University Health System Authority;
- 844 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for  
845 such employees shall be subject to the review and approval of the Board of Visitors of the University of  
846 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia  
847 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the  
848 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
- 849 20. In executive branch agencies the employee who has accepted serving in the capacity of chief  
850 deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential  
851 assistant for policy or administration. An employee serving in either one of these two positions shall be  
852 deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve  
853 in this exempt capacity;
- 854 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the  
855 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
- 856 22. Officers and employees of the Virginia Port Authority;
- 857 23. Employees of the Virginia College Savings Plan;
- 858 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental

Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;

26. Employees of the Virginia Indigent Defense Commission; ~~and~~

27. Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § 23-232; *and*

28. *The Chief Executive Officer of the Virginia Alcoholic Beverage Control Authority.*

**§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.**

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

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Board Authority, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

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

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

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

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person

920 who is the subject of the complaint may be released only with the consent of the subject person. Local  
921 governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

922 8. Information furnished in confidence to the Department of Human Resource Management with  
923 respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,  
924 correspondence and other records resulting from any such investigation, consultation or mediation.  
925 However, nothing in this section shall prohibit the distribution of information taken from inactive reports  
926 in a form that does not reveal the identity of the parties involved or other persons supplying  
927 information.

928 9. The names, addresses and telephone numbers of complainants furnished in confidence with respect  
929 to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform  
930 Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made  
931 to a local governing body.

932 10. Records of active investigations being conducted by the Department of Criminal Justice Services  
933 pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.),  
934 and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

935 11. Records furnished to or prepared by the Board of Education pursuant to subsection D of  
936 § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security,  
937 unauthorized alteration, or improper administration of tests by local school board employees responsible  
938 for the distribution or administration of the tests. However, this section shall not prohibit the disclosure  
939 of records to (i) a local school board or division superintendent for the purpose of permitting such board  
940 or superintendent to consider or to take personnel action with regard to an employee or (ii) any  
941 requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity  
942 of any person making a complaint or supplying information to the Board on a confidential basis and (b)  
943 does not compromise the security of any test mandated by the Board.

944 12. Investigator notes, and other correspondence and information, furnished in confidence with  
945 respect to an active investigation conducted by or for the Board of Education related to the denial,  
946 suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure  
947 of records to a local school board or division superintendent for the purpose of permitting such board or  
948 superintendent to consider or to take personnel action with regard to an employee. Records of completed  
949 investigations shall be disclosed in a form that does not reveal the identity of any complainant or person  
950 supplying information to investigators. The records disclosed shall include information regarding the  
951 school or facility involved, the identity of the person who was the subject of the complaint, the nature  
952 of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a  
953 complaint or does not lead to corrective action, the identity of the person who was the subject of the  
954 complaint may be released only with the consent of the subject person. No personally identifiable  
955 information in the records regarding a current or former student shall be released except as permitted by  
956 state or federal law.

957 13. Records, notes and information provided in confidence and related to an investigation by the  
958 Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of  
959 Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2,  
960 or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that  
961 has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is  
962 not otherwise prohibited by law and does not reveal the identity of charging parties, complainants,  
963 persons supplying information, witnesses or other individuals involved in the investigation.

964 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain**  
965 **other limited exemptions.**

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

968 1. State income, business, and estate tax returns, personal property tax returns, scholastic and  
969 confidential records held pursuant to § 58.1-3.

970 2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the  
971 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the  
972 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any  
973 political subdivision of the Commonwealth; or the president or other chief executive officer of any  
974 public institution of higher education in Virginia. However, no record, which is otherwise open to  
975 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to  
976 or incorporated within any working paper or correspondence.

977 As used in this subdivision:

978 "Members of the General Assembly" means each member of the Senate of Virginia and the House of  
979 Delegates and their legislative aides when working on behalf of such member.

980 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet  
981 Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to



whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

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

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

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

6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

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

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

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

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

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

1043 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department  
1044 of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the  
1045 Department not release such information.

1046 14. Financial, medical, rehabilitative and other personal information concerning applicants for or  
1047 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority  
1048 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

1049 15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of  
1050 the following: an individual's qualifications for or continued membership on its medical or teaching  
1051 staffs; proprietary information gathered by or in the possession of the Authority from third parties  
1052 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in  
1053 awarding contracts for construction or the purchase of goods or services; data, records or information of  
1054 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching  
1055 staffs; financial statements not publicly available that may be filed with the Authority from third parties;  
1056 the identity, accounts or account status of any customer of the Authority; consulting or other reports  
1057 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the  
1058 determination of marketing and operational strategies where disclosure of such strategies would be  
1059 harmful to the competitive position of the Authority; and data, records or information of a proprietary  
1060 nature produced or collected by or for employees of the Authority, other than the Authority's financial  
1061 or administrative records, in the conduct of or as a result of study or research on medical, scientific,  
1062 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a  
1063 governmental body or a private concern, when such data, records or information have not been publicly  
1064 released, published, copyrighted or patented.

1065 16. Records of the Department of Environmental Quality, the State Water Control Board, State Air  
1066 Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal  
1067 environmental enforcement actions that are considered confidential under federal law and (ii)  
1068 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records  
1069 shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the  
1070 director of the agency. This subdivision shall not be construed to prohibit the disclosure of records  
1071 related to inspection reports, notices of violation, and documents detailing the nature of any  
1072 environmental contamination that may have occurred or similar documents.

1073 17. As it pertains to any person, records related to the operation of toll facilities that identify an  
1074 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle  
1075 enforcement system information; video or photographic images; Social Security or other identification  
1076 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone  
1077 numbers; or records of the date or time of toll facility use.

1078 18. Records of the State Lottery Department pertaining to (i) the social security number, tax  
1079 identification number, state sales tax number, home address and telephone number, personal and lottery  
1080 banking account and transit numbers of a retailer, and financial information regarding the nonlottery  
1081 operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name,  
1082 hometown, and amount won shall be disclosed.

1083 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person  
1084 regulated by the Board, where such person has tested negative or has not been the subject of a  
1085 disciplinary action by the Board for a positive test result.

1086 20. Records, investigative notes, correspondence, and information pertaining to the planning,  
1087 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of  
1088 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,  
1089 employees or persons employed to perform an audit or examination of holder records.

1090 21. Records of the Virginia Department of Emergency Management or a local governing body  
1091 relating to citizen emergency response teams established pursuant to an ordinance of a local governing  
1092 body, to the extent that such records reveal the name, address, including e-mail address, telephone or  
1093 pager numbers, or operating schedule of an individual participant in the program.

1094 22. Records of state or local park and recreation departments and local and regional park authorities  
1095 to the extent such records contain information identifying a person under the age of 18 years. However,  
1096 nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory  
1097 information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C.  
1098 § 1232g, unless the public body has undertaken the parental notification and opt-out requirements  
1099 provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent,  
1100 or guardian of such person, unless the parent's parental rights have been terminated or a court of  
1101 competent jurisdiction has restricted or denied such access. For records of such persons who are  
1102 emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated  
1103 person who is the subject of the record may waive, in writing, the protections afforded by this  
1104 subdivision. If the protections are so waived, the public body shall open such records for inspection and

copying.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the record.

29. Records maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the

entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. *Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of any private entity; (iii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; (v) consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; or (vi) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.*

*In order for the records identified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:*

1. *Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*

2. *Identifying with specificity the data or other materials for which protection is sought; and*

3. *Stating the reasons why protection is necessary.*

*The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the proprietary information, trade secrets, or financial records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded it under this subdivision.*

**§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such

gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the

1289 amount invested or the present value of such investment.

1290 21. Those portions of meetings in which individual child death cases are discussed by the State Child  
1291 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which  
1292 individual child death cases are discussed by a regional or local child fatality review team established  
1293 pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed  
1294 by family violence fatality review teams established pursuant to § 32.1-283.3.

1295 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern  
1296 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any  
1297 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern  
1298 Virginia Medical School, as the case may be, have been delegated, in which there is discussed  
1299 proprietary, business-related information pertaining to the operations of the University of Virginia  
1300 Medical Center or Eastern Virginia Medical School, as the case may be, including business development  
1301 or marketing strategies and activities with existing or future joint venturers, partners, or other parties  
1302 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case  
1303 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such  
1304 information would adversely affect the competitive position of the Medical Center or Eastern Virginia  
1305 Medical School, as the case may be.

1306 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or  
1307 consideration of any of the following: the acquisition or disposition of real or personal property where  
1308 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;  
1309 operational plans that could affect the value of such property, real or personal, owned or desirable for  
1310 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and  
1311 contracts for services or work to be performed by the Authority; marketing or operational strategies  
1312 where disclosure of such strategies would adversely affect the competitive position of the Authority;  
1313 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications  
1314 or evaluations of other employees.

1315 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within  
1316 the Department of Health Professions to the extent such discussions identify any practitioner who may  
1317 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

1318 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein  
1319 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees  
1320 by or on behalf of individuals who have requested information about, applied for, or entered into  
1321 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.)  
1322 of Title 23 is discussed.

1323 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created  
1324 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et  
1325 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless  
1326 E-911 service.

1327 27. Those portions of disciplinary proceedings by any regulatory board within the Department of  
1328 Professional and Occupational Regulation, Department of Health Professions, or the Board of  
1329 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach  
1330 a decision or meetings of health regulatory boards or conference committees of such boards to consider  
1331 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as  
1332 requested by either of the parties.

1333 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of  
1334 § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in  
1335 § 56-557, or any independent review panel appointed to review information and advise the responsible  
1336 public entity concerning such records.

1337 29. Discussion of the award of a public contract involving the expenditure of public funds, including  
1338 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where  
1339 discussion in an open session would adversely affect the bargaining position or negotiating strategy of  
1340 the public body.

1341 30. Discussion or consideration of grant or loan application records excluded from this chapter  
1342 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the  
1343 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment  
1344 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

1345 31. Discussion or consideration by the Commitment Review Committee of records excluded from  
1346 this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as  
1347 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

1348 32. [Expired.]

1349 33. Discussion or consideration of confidential proprietary records and trade secrets excluded from  
1350 this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

46. *Discussion or consideration by the board of directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 33 of § 2.2-3705.7.*

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

**§ 2.2-3802. Systems to which chapter inapplicable.**

1412 The provisions of this chapter shall not apply to personal information systems:  
1413 1. Maintained by any court of the Commonwealth;  
1414 2. Which may exist in publications of general circulation;  
1415 3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or  
1416 in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police  
1417 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to  
1418 be posted on the Internet pursuant to § 9.1-913;  
1419 4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through  
1420 16.1-225;  
1421 5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth  
1422 to engage in the practice of any profession, in which case the names and addresses of persons applying  
1423 for or possessing the license may be disseminated upon written request to a person engaged in the  
1424 profession or business of offering professional educational materials or courses for the sole purpose of  
1425 providing the licensees or applicants for licenses with informational materials relating solely to available  
1426 professional educational materials or courses, provided the disseminating agency is reasonably assured  
1427 that the use of the information will be so limited;  
1428 6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review  
1429 Commission, the Virginia Racing Commission, and the ~~Department of Virginia~~ Alcoholic Beverage  
1430 Control Authority;  
1431 7. Maintained by the Department of State Police; the police department of the Chesapeake Bay  
1432 Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus  
1433 police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et  
1434 seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity;  
1435 and maintained by local departments of social services regarding alleged cases of child abuse or neglect  
1436 while such cases are also subject to an ongoing criminal prosecution;  
1437 8. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;  
1438 9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion  
1439 of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting  
1440 information on those subjects may be disseminated upon written request to a person engaged in the  
1441 business of providing travel services or distributing travel information, provided the Virginia Tourism  
1442 Authority is reasonably assured that the use of the information will be so limited;  
1443 10. Maintained by the Division of Consolidated Laboratory Services of the Department of General  
1444 Services and the Department of Forensic Science, which deal with scientific investigations relating to  
1445 criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;  
1446 11. Maintained by the Department of Corrections or the Office of the State Inspector General that  
1447 deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2  
1448 (§ 2.2-307 et seq.);  
1449 12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state  
1450 agencies or institutions that deal with communications and investigations relating to the Fraud, Waste  
1451 and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town  
1452 or a school board that deals with local investigations required by § 15.2-2511.2;  
1453 13. Maintained by the Department of Social Services or any local department of social services  
1454 relating to public assistance fraud investigations; and  
1455 14. Maintained by the Department of Social Services related to child welfare, adult services or adult  
1456 protective services, or public assistance programs when requests for personal information are made to  
1457 the Department of Social Services. Requests for information from these systems shall be made to the  
1458 appropriate local department of social services, which is the custodian of that record. Notwithstanding  
1459 the language in this section, an individual shall not be prohibited from obtaining information from the  
1460 central registry in accordance with the provisions of § 63.2-1515.

1461 **§ 2.2-4024. Hearing officers.**  
1462 A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided  
1463 over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court  
1464 and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal  
1465 fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to  
1466 have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent.  
1467 The Executive Secretary may promulgate rules necessary for the administration of the hearing officer  
1468 system and shall have the authority to establish the number of hearing officers necessary to preside over  
1469 administrative hearings in the Commonwealth.

1470 Prior to being included on the list, all hearing officers shall meet the following minimum standards:  
1471 1. Active membership in good standing in the Virginia State Bar;  
1472 2. Active practice of law for at least five years; and  
1473 3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In



order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the *Virginia Alcoholic Beverage Control Board Authority*, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

#### **§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.**

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this

determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. The ~~Department of~~ *Virginia Alcoholic Beverage Control Authority* for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by

appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

**§ 3.2-1010. Enforcement of chapter; summons.**

Any conservation police officer or law-enforcement officer as defined in § 9.1-101, excluding certain *members of the Virginia Alcoholic Beverage Control Board members Authority*, may enforce the provisions of this chapter and the regulations adopted hereunder as well as those who are so designated by the Commissioner. Those designated by the Commissioner may issue a summons to any person who violates any provision of this chapter to appear at a time and place to be specified in such summons.

**§ 4.1-100. Definitions.**

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

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Authority" means the *Virginia Alcoholic Beverage Control Authority created pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22 of Title 2.2.*

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the *board of directors of the Virginia Alcoholic Beverage Control Board Authority.*

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding

1658 alcoholic beverages.

1659 "Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains  
1660 grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes,  
1661 processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with  
1662 the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility  
1663 for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied  
1664 the grapes, fruits, or other agricultural products used in the production of the wine. The contract  
1665 winemaking facility shall have no right to sell the wine so produced but may charge the farm winery for  
1666 its services.

1667 "Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent  
1668 structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items  
1669 intended for human consumption consisting of a variety of such items of the types normally sold in  
1670 grocery stores.

1671 "Day spa" means any commercial establishment that offers to the public both massage therapy,  
1672 performed by persons certified in accordance with § 54.1-3029, and barbering or cosmetology services  
1673 performed by persons licensed in accordance with Chapter 7 (§ 54.1-700 et seq.) of Title 54.1.

1674 "Designated area" means a room or area approved by the Board for on-premises licensees.

1675 "Dining area" means a public room or area in which meals are regularly served.

1676 "Establishment" means any place where alcoholic beverages of one or more varieties are lawfully  
1677 manufactured, sold, or used.

1678 "Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing  
1679 vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the  
1680 premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol  
1681 by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing  
1682 area or agreements for purchasing grapes or other fruits from agricultural growers within the  
1683 Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or  
1684 lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this  
1685 definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of  
1686 individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm  
1687 winery, the term "farm" as used in this definition includes all of the land owned or leased by the  
1688 individual members of the cooperative as long as such land is located in the Commonwealth.

1689 "Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty  
1690 items relating to history, original and handmade arts and products, collectibles, crafts, and floral  
1691 arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure  
1692 where stock is displayed and offered for sale and which has facilities to properly secure any stock of  
1693 wine or beer. Such shop may be located (i) on the premises or grounds of a government registered  
1694 national, state or local historic building or site or (ii) within the premises of a museum. The Board shall  
1695 consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be  
1696 considered a gift shop.

1697 "Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may  
1698 lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such  
1699 persons facilities for manufacturing, fermenting and bottling such wine or beer.

1700 "Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage  
1701 facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and  
1702 beers of various types and sizes and related products such as cheeses and gourmet foods are habitually  
1703 furnished to persons.

1704 "Government store" means a store established by the Board for the sale of alcoholic beverages.

1705 "Hotel" means any duly licensed establishment, provided with special space and accommodation,  
1706 where, in consideration of payment, food and lodging are habitually furnished to persons, and which has  
1707 four or more bedrooms. It shall also mean the person who operates such hotel.

1708 "Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order  
1709 pursuant to this title.

1710 "Internet wine retailer" means a person who owns or operates an establishment with adequate  
1711 inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone  
1712 orders are taken and shipped directly to consumers and which establishment is not a retail store open to  
1713 the public.

1714 "Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to  
1715 observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

1716 "Licensed" means the holding of a valid license issued by the Board.

1717 "Licensee" means any person to whom a license has been granted by the Board.

1718 "Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol  
1719 content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § 4.1-124. In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the Board in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The Board may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant

license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the ~~Department of Virginia~~ Alcoholic Beverage Control Authority whom the Board has designated as a law-enforcement officer pursuant to § 4.1-105.

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § 4.1-236.

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § 4.1-210, or the monthly food sale requirement established by Board regulation, is met by such retail licensee.

#### **§ 4.1-103. General powers of Board.**

The Board shall have the power to:

1. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

2. Buy and sell any mixers;

3. Control the possession, sale, transportation and delivery of alcoholic beverages;

4. Determine, subject to § 4.1-121, the localities within which government stores shall be established or operated and the location of such stores;

5. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

6. Lease, occupy and improve any land or building required for the purposes of this title;

7. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

8. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

9. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;

10. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take

testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

12. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

13. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of this chapter;

14. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

15. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

16. Maintain actions to enjoin common nuisances as defined in § 4.1-317;

17. Establish minimum food sale requirements for all retail licensees; ~~and~~

18. *Require affirmations from a producer of distilled spirits that spirits sold to the Board are not sold at a cost higher than the lowest price at which the item was sold by such producer anywhere in any other state or in the District of Columbia or to any state or state agency that owns and operates a retail liquor store. The Board may require a producer of distilled spirits products to file an affirmation statement on a form prescribed by the Board verifying the bottle and case price as well as any discounts then in effect; and*

19. Do all acts necessary or advisable to carry out the purposes of this title.

**§ 4.1-103.1. Criminal history records check required on certain employees; reimbursement of costs.**

On or after July 1, 1994, all persons hired by the ~~Board~~ Authority whose job duties involve access to or handling of departmental funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

*No person who has been convicted of a felony or of a crime involving moral turpitude shall be employed by the Authority.*

The Department of State Police shall be reimbursed by the ~~Board~~ Authority for the cost of investigations conducted pursuant to this section.

**§ 4.1-111. Regulations of Board.**

A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall have the effect of law.

B. The Board shall promulgate regulations that:

1. Prescribe what hours and on what days alcoholic beverages shall not be sold by licensees or consumed on any licensed premises, including a provision that mixed beverages may be sold only at such times as wine and beer may be sold.

2. Require mixed beverage caterer licensees to notify the Board in advance of any event to be served by such licensee.

3. Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions.

4. Establish requirements for the form, content, and retention of all records and accounts, including the (i) reporting and collection of taxes required by § 4.1-236 and (ii) the sale of alcoholic beverages in kegs, by all licensees.

5. ~~Require retail licensees to file an appeal from any hearing decision rendered by a hearing officer within 30 days of the date the notice of the decision is sent. The notice shall be sent to the licensee at the address on record with the Board by certified mail, return receipt requested, and by regular mail.~~

6. Prescribe the terms and conditions under which persons who collect or trade designer or vintage spirit bottles may sell such bottles at auction, provided that (i) the auction is conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 and (ii) the bottles are unopened and the manufacturers' seals, marks, or stamps affixed to the bottles are intact.

7. 6. Prescribe the terms and conditions under which credit or debit cards may be accepted from

licensees for purchases at government stores, including provision for the collection, where appropriate, of related fees, penalties, and service charges.

8. 7. Require that banquet licensees in charge of public events as defined by Board regulations report to the Board the income and expenses associated with the public event on a form prescribed by the Board when the banquet licensee engages another person to organize, conduct or operate the event on behalf of the banquet licensee. Such regulations shall be applicable only to public events where alcoholic beverages are being sold.

9. 8. Provide alternative methods for licensees to maintain and store business records that are subject to Board inspection, including methods for Board-approved electronic and off-site storage.

10. 9. Require off-premises retail licensees to place any premixed alcoholic energy drinks containing one-half of one percent or more of alcohol by volume in the same location where wine and beer are available for sale within the licensed premises.

11. 10. Prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

12. 11. Prescribe the schedule of proration for refunded license taxes to licensees who qualify pursuant to subsection C of § 4.1-232.

13. 12. Establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages, not inconsistent with the provisions of this title, so that such advertising does not encourage or otherwise promote the consumption of alcoholic beverages by persons to whom alcoholic beverages may not be lawfully sold. Such regulations shall:

a. Restrict outdoor advertising of alcoholic beverages in publicly visible locations consistent with (i) the general prohibition against tied interests between retail licensees and manufacturers or wholesale licensees as provided in §§ 4.1-215 and 4.1-216; (ii) the prohibition against manufacturer control of wholesale licensees as set forth in § 4.1-223 and Board regulations adopted pursuant thereto; and (iii) the general prohibition against cooperative advertising between manufacturers, wholesalers, or importers and retail licensees as set forth in Board regulation; and

b. Permit (i) any outdoor signage or advertising not otherwise prohibited by this title and (ii) the display of outdoor alcoholic beverage advertising on lawfully erected billboard signs regulated under Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 where such signs are located on commercial real estate as defined in § 55-526, but only in accordance with this title.

14. 13. Prescribe the terms and conditions under which a licensed brewery may manufacture beer pursuant to an agreement with a brand owner not under common control with the manufacturing brewery and sell and deliver the beer so manufactured to the brand owner. The regulations shall require that (i) the brand owner be an entity appropriately licensed as a brewery or beer wholesaler, (ii) a written agreement be entered into by the parties, and (iii) records as deemed appropriate by the Board are maintained by the parties.

C. The Board may promulgate regulations that:

1. Provide for the waiver of the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event. For the purposes of clause (ii), the applicant shall submit with the application, an affidavit certifying its not-for-profit status. The granting of such waiver shall be limited to two events per year for each applicant.

2. Establish limitations on the quantity and value of any gifts of alcoholic beverages made in the course of any business entertainment pursuant to subdivision A 22 of § 4.1-325 or subsection C of § 4.1-325.2.

D. Board regulations shall be uniform in their application, except those relating to hours of sale for licensees.

E. Courts shall take judicial notice of Board regulations.

F. The Board's power to regulate shall be broadly construed.

#### **§ 4.1-119. Operation of government stores.**

A. Subject to the requirements of §§ 4.1-121 and 4.1-122, the Board may establish, maintain and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

B. With respect to the sale of wine produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine per year.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in



the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers. *Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.*

D. Alcoholic beverages at government stores shall be sold by employees of the Board, who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises, provided:

1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are grown on the licensee's farm or land in Virginia leased by the licensee and no more than 25 percent of the agricultural products are grown or produced outside the Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a lesser percentage of products grown on the licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the availability of agricultural products grown on the farm to manufacture the spirits during a given license year;

2. Such licensee is a duly organized nonprofit association holding title to real property, together with improvements thereon that are significant in American history, under a charter from the Commonwealth to preserve such property, and which association accepts no federal, state, or local funds;

3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site;

4. Such licensee is an independently certified organic distillery, with such certification by a USDA-accredited certification agency; or

5. Such licensee is employing traditional distilling techniques, including the use of authentic copper pot stills to blend or produce spirits in any county with a population of less than 20,000.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the Board and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § 4.1-201 to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § 4.1-212, and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § 4.1-201.1. No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § 4.1-304. The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H. With respect to purchases by licensees at government stores, the Board shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the Board, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the Board shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

2027 **§ 4.1-121. Referendum on establishment of government stores.**

2028 A. The qualified voters of any county, city, or town having a population of 1,000 or more may file a  
2029 petition with the circuit court of the county or city, or of the county wherein the town or the greater  
2030 part thereof is situated, asking that a referendum be held on the question of whether the sale by the  
2031 Board of Alcoholic Beverages, other than beer and wine not produced by farm wineries, should be  
2032 permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at  
2033 least ten percent of the number registered in the jurisdiction on January 1 preceding its filing or by at  
2034 least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the  
2035 election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on  
2036 the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of  
2037 general circulation in the county, city, or town once a week for three consecutive weeks prior to the  
2038 referendum.

2039 The question on the ballot shall be:

2040 "Shall the sale by the *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* of alcoholic beverages,  
2041 other than beer and wine not produced by farm wineries, be permitted in ..... (name of county,  
2042 city, or town)?"

2043 The referendum shall be ordered and held and the results certified as provided in § 24.2-684.  
2044 Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to  
2045 the Board and to the governing body of the county, city, or town.

2046 B. Once a referendum has been held, no other referendum on the same question shall be held in the  
2047 county, city, or town within four years of the date of the prior referendum. However, a town shall not  
2048 be prescribed from holding a referendum within such period although an election has been held in the  
2049 county in which the town or a part thereof is located less than four years prior thereto.

2050 **§ 4.1-124. Referendum on the sale of mixed beverages.**

2051 A. The provisions of this title relating to the sale of mixed beverages shall not become effective in  
2052 any town, county, or supervisor's election district of a county until a majority of the voters voting in a  
2053 referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by  
2054 restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election  
2055 district of a county may file a petition with the circuit court of the county asking that a referendum be  
2056 held on the question of whether the sale of mixed beverages by restaurants licensed by the Board should  
2057 be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to  
2058 at least 10 percent of the number registered in the town, county, or supervisor's election district on  
2059 January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

2060 Petition requirements for any county shall be based on the number of registered voters in the county,  
2061 including the number of registered voters in any town having a population in excess of 1,000 located  
2062 within such county. Upon the filing of a petition, and under no other circumstances, the court shall order  
2063 the election officials of the county to conduct a referendum on the question.

2064 The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of  
2065 general circulation in the town, county, or supervisor's election district once a week for three consecutive  
2066 weeks prior to the referendum.

2067 The question on the ballot shall be:

2068 "Shall the sale of mixed alcoholic beverages by restaurants licensed by the *Virginia* Alcoholic  
2069 Beverage Control ~~Board~~ *Authority* be permitted in ..... (name of town, county, or supervisor's election  
2070 district of county)?"

2071 The referendum shall be ordered and held and the results certified as provided in Article 5  
2072 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. Thereupon the court shall enter of record an order  
2073 certified by the clerk of the court to be transmitted to the Board and to the governing body of the town  
2074 or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title  
2075 be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of  
2076 a county on or after 30 days following the entry of the order if a majority of the voters voting in the  
2077 referendum have voted "Yes."

2078 The provisions of this section shall be applicable to towns having a population in excess of 1,000 to  
2079 the same extent and subject to the same conditions and limitations as are otherwise applicable to  
2080 counties under this section. Such towns shall be treated as separate local option units, and only residents  
2081 of any such town shall be eligible to vote in any referendum held pursuant to this section for any such  
2082 town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote  
2083 in any referendum held pursuant to this section for any county in which the town is located.

2084 The provisions of this section shall not require any town created as a result of a city-to-town  
2085 reversion pursuant to Chapter 41 (§ 15.2-4100 et seq.) of Title 15.2 to hold a referendum on the same  
2086 question if a majority of the voters voting in the former city had previously approved the sale of mixed  
2087 beverages by restaurants licensed by the Board in such city.

2088 B. Once a referendum has been held, no other referendum on the same question shall be held in the

town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § 4.1-122, the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § 4.1-210. However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

**§ 4.1-128. Local ordinances or resolutions regulating or taxing alcoholic beverages.**

A. No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the *Virginia Alcoholic Beverage Control Board Authority*, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by §§ 58.1-605, 58.1-3833 or § 58.1-3840. The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were nonalcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § 4.1-308 subject to the provisions of subsection B of § 4.1-308, or the acts described in § 4.1-309 and may provide a penalty for violation thereof and (ii) subject to subsection C of § 4.1-308, regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

**§ 4.1-209.1. Direct shipment of wine and beer; shipper's license.**

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section. Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such brands that an application has been filed for a shipper's license. The notice shall be in writing and in a

2150 form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary  
2151 to implement the provisions of this section, including regulations that permit the holder of a shipper's  
2152 license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or  
2153 beer identified in such shipper's license.

2154 B. Any applicant for a wine or beer shipper's license that does not own or have the right to control  
2155 the distribution of the brands of wine, farm wine, or beer identified in such person's application may be  
2156 issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its  
2157 application for a shipper's license, and with any subsequent application for renewal thereof, the written  
2158 consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are  
2159 identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by  
2160 the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor,  
2161 that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its  
2162 brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from  
2163 withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery,  
2164 or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to  
2165 withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such  
2166 shipper licensee shall promptly file with the Board an amendment to its license eliminating any such  
2167 withdrawn brand or brands from the shipper's license.

2168 C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall  
2169 be by approved common carrier only. The Board shall develop regulations pursuant to which common  
2170 carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by  
2171 holders of licenses issued pursuant to this section. Such regulations shall include provisions that require  
2172 (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to  
2173 sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and  
2174 (iii) the Board-approved common carrier to submit to the Board such information as the Board may  
2175 prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears  
2176 to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or  
2177 beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of  
2178 each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location  
2179 stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR  
2180 OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common  
2181 carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee  
2182 shall be liable only for their independent acts.

2183 D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each  
2184 shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in  
2185 Virginia. The licensee shall collect the taxes due to the Commonwealth and remit any excise taxes  
2186 monthly to the ~~Department of Virginia~~ Alcoholic Beverage Control Authority and any sales taxes to the  
2187 Department of Taxation.

2188 E. Notwithstanding the provisions of § 4.1-203, the holder of a wine shipper license or beer shipper  
2189 license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month  
2190 club at in-state or out-of-state locations for which a license for on-premises consumption has been  
2191 issued, other than the place where the licensee carries on the business for which the license is granted.  
2192 For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an  
2193 agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license  
2194 and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell  
2195 and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month  
2196 for an agreed term of months.

2197 F. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may ship wine or  
2198 beer as authorized by this section through the use of the services of an approved fulfillment warehouse.  
2199 For the purposes of this section, a "fulfillment warehouse" means a business operating a warehouse and  
2200 providing storage, packaging, and shipping services to wineries or breweries. The Board shall develop  
2201 regulations pursuant to which fulfillment warehouses may apply for approval to provide storage,  
2202 packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations  
2203 shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately  
2204 licensed for the services to be provided by the state in which its place of business is located, (ii) the  
2205 Board-approved fulfillment warehouse to maintain such records and to submit to the Board such  
2206 information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer  
2207 shipper licensed under this section to whom services are provided to enter into a contract designating the  
2208 fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this  
2209 section.

2210 G. Notwithstanding the provisions of § 4.1-203, a wine or beer shipper licensee may sell wine or  
2211 beer as authorized by this section through the use of the services of an approved marketing portal. For

the purposes of this section, a "marketing portal" means a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine or beer and accepting and processing payment of such orders as the agent of a licensed wine or beer shipper. The Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section.

**§ 4.1-212.1. Permits; delivery of wine and beer; regulations of Board.**

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal consumption.

B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal consumption.

C. All such deliveries shall be to consumers within the Commonwealth for personal consumption only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the permittee. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold; except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

D. For purposes of §§ 4.1-234 and 4.1-236 and Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the Department of Virginia Alcoholic Beverage Control Authority and any sales taxes to the Department of Taxation.

**§ 4.1-325. Prohibited acts by mixed beverage licensees; penalty.**

A. In addition to § 4.1-324, no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to *subdivision B 10 of § 4.1-111 B 44*;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;
9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;

2273 10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or  
2274 obliterated;

2275 11. Allow any obscene conduct, language, literature, pictures, performance or materials on the  
2276 licensed premises;

2277 12. Allow any striptease act on the licensed premises;

2278 13. Allow persons connected with the licensed business to appear nude or partially nude;

2279 14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty  
2280 and in a position that is involved in the selling or serving of alcoholic beverages to customers.

2281 The provisions of this subdivision shall not prohibit any retail licensee or his designated employee  
2282 from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative  
2283 of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of  
2284 the Board who represents a distiller, if such samples are provided in accordance with Board regulations  
2285 and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of  
2286 § 4.1-225 or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for  
2287 quality control purposes;

2288 15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license  
2289 whether the closure is broken or unbroken except in accordance with § 4.1-210.

2290 The provisions of this subdivision shall not apply to the delivery of:

2291 a. "Soju." For the purposes of this ~~clause~~ subdivision, "soju" means a traditional Korean alcoholic  
2292 beverage distilled from rice, barley, or sweet potatoes; or

2293 b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content  
2294 is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and  
2295 perishable;

2296 16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

2297 17. Conceal any sale or consumption of any alcoholic beverages;

2298 18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or  
2299 obstruct special agents of the Board in the discharge of their duties;

2300 19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any  
2301 such alcoholic beverages from the premises;

2302 20. Knowingly employ in the licensed business any person who has the general reputation as a  
2303 prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person  
2304 who drinks to excess or engages in illegal gambling;

2305 21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device,  
2306 machine or apparatus;

2307 22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a  
2308 matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the  
2309 restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or  
2310 conduct on any conference, convention, trade show or event held or to be held on the premises of the  
2311 licensee, when such gift is made in the course of usual and customary business entertainment and is in  
2312 no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection  
2313 C of § 4.1-209; or (iv) pursuant to subdivision A 12 of § 4.1-201. Any gift permitted by this subdivision  
2314 shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall  
2315 keep complete and accurate records of gifts given in accordance with this subdivision; or

2316 23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or  
2317 device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase  
2318 the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the  
2319 normal or customary price charged for the same alcoholic beverage.

2320 B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

2321 C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters,  
2322 concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or  
2323 theatrical performances, when the performances that are presented are expressing matters of serious  
2324 literary, artistic, scientific, or political value.

2325 **§ 9.1-101. Definitions.**

2326 As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires  
2327 a different meaning:

2328 "Administration of criminal justice" means performance of any activity directly involving the  
2329 detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication,  
2330 correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection,  
2331 storage, and dissemination of criminal history record information.

2332 "Board" means the Criminal Justice Services Board.

2333 "Conviction data" means information in the custody of any criminal justice agency relating to a  
2334 judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs officers appointed under § 15.2-1737, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the State Lottery Department; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632; or (ix) campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

#### **§ 9.1-102. Powers and duties of the Board and the Department.**

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and

2396 information by law-enforcement officers within the Commonwealth. Any proposed regulations  
2397 concerning the privacy, confidentiality, and security of criminal justice information shall be submitted  
2398 for review and comment to any board, commission, or committee or other body which may be  
2399 established by the General Assembly to regulate the privacy, confidentiality, and security of information  
2400 collected and maintained by the Commonwealth or any political subdivision thereof;

2401 2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement  
2402 officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time  
2403 required for completion of such training;

2404 3. Establish minimum training standards and qualifications for certification and recertification for  
2405 law-enforcement officers serving as field training officers;

2406 4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and  
2407 programs for schools, whether located in or outside the Commonwealth, which are operated for the  
2408 specific purpose of training law-enforcement officers;

2409 5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize  
2410 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in  
2411 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum  
2412 qualifications for certification and recertification of instructors who provide such training;

2413 6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating  
2414 to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be  
2415 completed by law-enforcement officers who have not completed the compulsory training standards set  
2416 out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure  
2417 to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly  
2418 admissible testimony or other evidence from such officer resulting from any undercover investigation;

2419 7. Establish compulsory minimum entry-level, in-service and advanced training standards for those  
2420 persons designated to provide courthouse and courtroom security pursuant to the provisions of  
2421 § 53.1-120, and to establish the time required for completion of such training;

2422 8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy  
2423 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time  
2424 required for the completion of such training;

2425 9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as  
2426 the time required for completion of such training, for persons employed as deputy sheriffs and jail  
2427 officers by local criminal justice agencies, correctional officers employed by the Department of  
2428 Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile  
2429 correctional facility as the term is defined in § 66-25.3;

2430 10. Establish compulsory minimum training standards for all dispatchers employed by or in any local  
2431 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such  
2432 training standards shall apply only to dispatchers hired on or after July 1, 1988;

2433 11. Establish compulsory minimum training standards for all auxiliary police officers employed by or  
2434 in any local or state government agency. Such training shall be graduated and based on the type of  
2435 duties to be performed by the auxiliary police officers. Such training standards shall not apply to  
2436 auxiliary police officers exempt pursuant to § 15.2-1731;

2437 12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state  
2438 and federal governmental agencies, and with universities, colleges, community colleges, and other  
2439 institutions, whether located in or outside the Commonwealth, concerning the development of police  
2440 training schools and programs or courses of instruction;

2441 13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,  
2442 for school operation for the specific purpose of training law-enforcement officers; but this shall not  
2443 prevent the holding of any such school whether approved or not;

2444 14. Establish and maintain police training programs through such agencies and institutions as the  
2445 Board deems appropriate;

2446 15. Establish compulsory minimum qualifications of certification and recertification for instructors in  
2447 criminal justice training schools approved by the Department;

2448 16. Conduct and stimulate research by public and private agencies which shall be designed to  
2449 improve police administration and law enforcement;

2450 17. Make recommendations concerning any matter within its purview pursuant to this chapter;

2451 18. Coordinate its activities with those of any interstate system for the exchange of criminal history  
2452 record information, nominate one or more of its members to serve upon the council or committee of any  
2453 such system, and participate when and as deemed appropriate in any such system's activities and  
2454 programs;

2455 19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this  
2456 chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to  
2457 submit information, reports, and statistical data with respect to its policy and operation of information



systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

20. Conduct audits as required by § 9.1-131;

21. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

22. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

23. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs

2519 and activities and for the allocation, expenditure and subgranting of funds available to the  
2520 Commonwealth and to units of general local government, and for carrying out the purposes of this  
2521 chapter and the powers and duties set forth herein;

2522 36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

2523 37. Establish training standards and publish a model policy for law-enforcement personnel in the  
2524 handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for  
2525 determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall  
2526 provide technical support and assistance to law-enforcement agencies in carrying out the requirements  
2527 set forth in § 9.1-1301 and shall by December 1, 2009, submit a report on the status of implementation  
2528 of these requirements to the chairmen of the House and Senate Courts of Justice Committees;

2529 38. Establish training standards and publish a model policy for law-enforcement personnel in  
2530 communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

2531 39. Establish compulsory training standards for basic training and the recertification of  
2532 law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for  
2533 biased policing;

2534 40. Review and evaluate community-policing programs in the Commonwealth, and recommend where  
2535 necessary statewide operating procedures, guidelines, and standards which strengthen and improve such  
2536 programs, including sensitivity to and awareness of cultural diversity and the potential for biased  
2537 policing;

2538 41. Publish and disseminate a model policy or guideline that may be used by state and local agencies  
2539 to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the  
2540 potential for biased policing;

2541 42. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with  
2542 Virginia law-enforcement agencies, provide technical assistance and administrative support, including  
2543 staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center  
2544 may provide accreditation assistance and training, resource material, and research into methods and  
2545 procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia  
2546 accreditation status;

2547 43. Promote community policing philosophy and practice throughout the Commonwealth by  
2548 providing community policing training and technical assistance statewide to all law-enforcement  
2549 agencies, community groups, public and private organizations and citizens; developing and distributing  
2550 innovative policing curricula and training tools on general community policing philosophy and practice  
2551 and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia  
2552 organizations with specific community policing needs; facilitating continued development and  
2553 implementation of community policing programs statewide through discussion forums for community  
2554 policing leaders, development of law-enforcement instructors; promoting a statewide community policing  
2555 initiative; and serving as a statewide information source on the subject of community policing including,  
2556 but not limited to periodic newsletters, a website and an accessible lending library;

2557 44. Establish, in consultation with the Department of Education and the Virginia State Crime  
2558 Commission, compulsory minimum standards for employment and job-entry and in-service training  
2559 curricula and certification requirements for school security officers, which training and certification shall  
2560 be administered by the Virginia Center for School Safety pursuant to § 9.1-184. Such training standards  
2561 shall include, but shall not be limited to, the role and responsibility of school security officers, relevant  
2562 state and federal laws, school and personal liability issues, security awareness in the school environment,  
2563 mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics.  
2564 The Department shall establish an advisory committee consisting of local school board representatives,  
2565 principals, superintendents, and school security personnel to assist in the development of these standards  
2566 and certification requirements;

2567 45. Establish training standards and publish a model policy and protocols for local and regional  
2568 sexual assault response teams;

2569 46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with  
2570 Article 11 (§ 9.1-185 et seq.);

2571 47. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

2572 48. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal  
2573 justice agencies regarding the investigation, registration, and dissemination of information requirements  
2574 as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

2575 49. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula,  
2576 and (iii) certification requirements for campus security officers. Such training standards shall include, but  
2577 not be limited to, the role and responsibility of campus security officers, relevant state and federal laws,  
2578 school and personal liability issues, security awareness in the campus environment, and disaster and  
2579 emergency response. The Department shall provide technical support and assistance to campus police  
2580 departments and campus security departments on the establishment and implementation of policies and

procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

50. Establish compulsory training standards and publish a model policy for law-enforcement personnel regarding death notification;

51. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established pursuant to § 9.1-187;

52. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the Virginia Alcoholic Beverage Control Board Authority;

53. Establish training standards and publish a model policy for law-enforcement personnel assigned to vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

54. Establish training standards and publish a model policy for law-enforcement personnel involved in criminal investigations that embody current best practices for conducting photographic and live lineups;

55. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

56. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of § 46.2-117; and

57. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

**§ 9.1-400. Title of chapter; definitions.**

A. This chapter shall be known and designated as the Line of Duty Act.

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

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board Authority; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217.

2642 "Disabled person" means any individual who, as the direct or proximate result of the performance of  
2643 his duty in any position listed in the definition of deceased person in this section, has become mentally  
2644 or physically incapacitated so as to prevent the further performance of duty where such incapacity is  
2645 likely to be permanent. The term shall also include any state employee included in the definition of a  
2646 deceased person who was disabled on or after January 1, 1966.

2647 "Line of duty" means any action the deceased or disabled person was obligated or authorized to  
2648 perform by rule, regulation, condition of employment or service, or law.

2649 **§ 9.1-500. Definitions.**

2650 As used in this chapter, unless the context requires a different meaning:

2651 "Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine  
2652 Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the  
2653 ~~Department of Virginia~~ Alcoholic Beverage Control *Authority*, the Department of Conservation and  
2654 Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police  
2655 department of any public institution of higher education of the Commonwealth employing the  
2656 law-enforcement officer.

2657 "Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of  
2658 the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and  
2659 (ii) a nonprobationary officer of one of the following agencies:

2660 a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources  
2661 Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the ~~Department~~  
2662 ~~of Virginia~~ Alcoholic Beverage Control *Authority*, the Department of Motor Vehicles, or the Department  
2663 of Conservation and Recreation;

2664 b. The police department, bureau or force of any political subdivision or the campus police  
2665 department of any public institution of higher education of the Commonwealth where such department,  
2666 bureau or force has ten or more law-enforcement officers; or

2667 c. Any conservation police officer as defined in § 9.1-101.

2668 For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department  
2669 of any city or county.

2670 **§ 9.1-801. Public safety officer defined.**

2671 As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this  
2672 Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a  
2673 correctional officer employed at a juvenile correctional facility as the term is defined in § 66-25.3; a jail  
2674 officer; a regional jail or jail farm superintendent; a member of any fire company or department or  
2675 rescue squad that has been recognized by an ordinance or resolution of the governing body of any  
2676 county, city or town of this Commonwealth as an integral part of the official safety program of such  
2677 county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia  
2678 Defense Force while such a member is serving in the Virginia National Guard or the Virginia Defense  
2679 Force on official state duty or federal duty under Title 32 of the United States Code; any special agent  
2680 of the Virginia Alcoholic Beverage Control ~~Board~~ *Authority*; any police agent appointed under the  
2681 provisions of § 56-353; any regular or special conservation police officer who receives compensation  
2682 from a county, city or town or from the Commonwealth appointed pursuant to § 29.1-200; any  
2683 commissioned forest warden appointed pursuant to § 10.1-1135; any member or employee of the  
2684 Virginia Marine Resources Commission granted the power to arrest pursuant to § 28.2-900; any  
2685 Department of Emergency Management hazardous materials officer; any nonfirefighter regional  
2686 hazardous materials emergency response team member; any investigator who is a full-time sworn  
2687 member of the security division of the State Lottery Department; any full-time sworn member of the  
2688 enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice  
2689 Services qualifications, when fulfilling duties pursuant to § 46.2-217; any campus police officer  
2690 appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23; and any conservation officer  
2691 of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

2692 **§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.**

2693 A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine  
2694 industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the  
2695 citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning  
2696 categories. Local restriction upon such activities and events of farm wineries licensed in accordance with  
2697 Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic  
2698 impact on the farm winery of such restriction, the agricultural nature of such activities and events, and  
2699 whether such activities and events are usual and customary for farm wineries throughout the  
2700 Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without  
2701 local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No  
2702 local ordinance regulating noise, other than outdoor amplified music, arising from activities and events  
2703 at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor

amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;

3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the *Virginia Alcoholic Beverage Control Board Authority*;

4. The sale and shipment of wine to the *Virginia Alcoholic Beverage Control Board Authority*, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the *Virginia Alcoholic Beverage Control Board Authority*, and federal law;

5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the *Virginia Alcoholic Beverage Control Board Authority*, and federal law; or

6. The sale of wine-related items that are incidental to the sale of wine.

**§ 18.2-57. Assault and battery.**

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the

2765 performance of his duties as an emergency health care provider in an emergency room of a hospital or  
2766 clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1  
2767 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15  
2768 days in jail, two days of which shall be a mandatory minimum term of confinement.

2769 F. As used in this section:

2770 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge  
2771 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore  
2772 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'  
2773 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute  
2774 judge of such district court.

2775 "Law-enforcement officer" means any full-time or part-time employee of a police department or  
2776 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof  
2777 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or  
2778 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and  
2779 Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Virginia  
2780 Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, and  
2781 full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed  
2782 pursuant to § 46.2-217, and such officer also includes jail officers in local and regional correctional  
2783 facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail  
2784 responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and  
2785 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the  
2786 Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant  
2787 to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

2788 "School security officer" means an individual who is employed by the local school board for the  
2789 purpose of maintaining order and discipline, preventing crime, investigating violations of school board  
2790 policies and detaining persons violating the law or school board policies on school property, a school  
2791 bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and  
2792 welfare of all students, faculty and staff in the assigned school.

2793 G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any  
2794 teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school  
2795 bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the  
2796 following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain  
2797 order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from  
2798 the scene of a disturbance that threatens physical injury to persons or damage to property; (iii)  
2799 reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv)  
2800 reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary  
2801 force to obtain possession of weapons or other dangerous objects or controlled substances or associated  
2802 paraphernalia that are upon the person of the student or within his control.

2803 In determining whether a person was acting within the exceptions provided in this subsection, due  
2804 deference shall be given to reasonable judgments that were made by a teacher, teacher aide, principal,  
2805 assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at  
2806 the time of the event.

#### 2807 § 18.2-246.6. Definitions.

2808 For purposes of this article:

2809 "Adult" means a person who is at least the legal minimum purchasing age.

2810 "Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

2811 "Consumer" means an individual who is not permitted as a wholesaler pursuant to § 58.1-1011 or  
2812 who is not a retailer.

2813 "Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of  
2814 whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for  
2815 such sale by means of a telephonic or other method of voice transmission, the mails or any other  
2816 delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the  
2817 mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a  
2818 wholesale dealer or retail dealer, as such terms are defined in § 58.1-1000, shall not be a delivery sale.  
2819 A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the  
2820 owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall  
2821 not be a delivery sale.

2822 "Delivery service" means any person who is engaged in the commercial delivery of letters, packages,  
2823 or other containers.

2824 "Legal minimum purchasing age" is the minimum age at which an individual may legally purchase  
2825 cigarettes in the Commonwealth.

2826 "Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

**§ 18.2-308. Carrying concealed weapons; exceptions; penalty.**

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § 18.2-308.012, this section shall not apply to:

1. Any person while in his own place of business;

2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;

3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 retired from a campus police department, and any retired investigator of the security division of the State Lottery Department, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the

2888 service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a  
2889 concealed handgun, he may retain the previously issued written proof of consultation. A retired  
2890 law-enforcement officer who receives proof of consultation and favorable review pursuant to this  
2891 subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer  
2892 authorized to carry a concealed handgun pursuant to subdivision 2.

2893 7a. Any person who is eligible for retirement with at least 20 years of service with a  
2894 law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from  
2895 such law-enforcement agency or board to accept a position covered by a retirement system that is  
2896 authorized under Title 51.1, provided such person carries with him written proof of consultation with  
2897 and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement  
2898 officer of the agency from which he resigned or, in the case of special agents, issued by the State  
2899 Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the  
2900 proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the  
2901 Department of State Police for entry into the Virginia Criminal Information Network. The chief  
2902 law-enforcement officer shall not without cause withhold such written proof if the law-enforcement  
2903 officer otherwise meets the requirements of this section.

2904 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the  
2905 privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the  
2906 proof of consultation and favorable review required, shall be deemed to have been issued a concealed  
2907 handgun permit.

2908 For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired  
2909 or resigned law-enforcement officer who receives proof of consultation and review pursuant to  
2910 subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or  
2911 resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is  
2912 required of active law-enforcement officers in the Commonwealth. If such retired or resigned  
2913 law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer  
2914 shall issue the retired or resigned officer certification, valid one year from the date of issuance,  
2915 indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

2916 8. Any State Police officer who is a member of the organized reserve forces of any of the armed  
2917 services of the United States, national guard, or naval militia, while such officer is called to active  
2918 military duty, provided such officer carries with him written proof of consultation with and favorable  
2919 review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof  
2920 of consultation and favorable review shall be valid as long as the officer is on active military duty and  
2921 shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of  
2922 consultation and favorable review shall be entered into the Virginia Criminal Information Network. The  
2923 Superintendent of State Police shall not without cause withhold such written proof if the officer is in  
2924 good standing and is qualified to carry a weapon while on active law-enforcement duty.

2925 For purposes of applying the reciprocity provisions of § 18.2-308.014, any person granted the  
2926 privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of  
2927 consultation and favorable review required, shall be deemed to have been issued a concealed handgun  
2928 permit;

2929 9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such  
2930 attorney may travel in the Commonwealth;

2931 10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal,  
2932 private motor vehicle or vessel and such handgun is secured in a container or compartment in the  
2933 vehicle or vessel; and

2934 11. Any enrolled participant of a firearms training course who is at, or going to or from, a training  
2935 location, provided that the weapons are unloaded and securely wrapped while being transported.

2936 D. This section shall also not apply to any of the following individuals while in the discharge of  
2937 their official duties, or while in transit to or from such duties:

2938 1. Carriers of the United States mail;

2939 2. Officers or guards of any state correctional institution;

2940 3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for  
2941 the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following  
2942 conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a  
2943 permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other  
2944 persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

2945 4. Noncustodial employees of the Department of Corrections designated to carry weapons by the  
2946 Director of the Department of Corrections pursuant to § 53.1-29; and

2947 5. Harbormaster of the City of Hopewell.

2948 **§ 18.2-308.03. Fees for concealed handgun permits.**

2949 A. The clerk shall charge a fee of \$10 for the processing of an application or issuing of a permit,



including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed \$35 to cover the cost of conducting an investigation pursuant to this article. The \$35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant. The State Police may charge a fee not to exceed \$5 to cover its costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed \$50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application.

B. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the *Virginia Alcoholic Beverage Control Board Authority* or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § 53.1-1 after completing 15 years of service.

**§ 18.2-308.012. Prohibited conduct.**

A. Any person permitted to carry a concealed handgun who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1, maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

B. No person who carries a concealed handgun onto the premises of any restaurant or club as defined in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board Authority under Title 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local law-enforcement officer.

**§ 18.2-371.2. Prohibiting purchase or possession of tobacco products by minors or sale of tobacco products to minors.**

A. No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings.

Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase or possess any tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings. The provisions of this subsection shall not be applicable to the possession of tobacco products, including wrappings, by a person less than 18 years of age making a delivery of tobacco products, including wrappings, in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

3011 C. No person shall sell a tobacco product, including but not limited to cigarettes, cigars, bidis, and  
3012 wrappings, to any individual who does not demonstrate, by producing a driver's license or similar photo  
3013 identification issued by a government agency, that the individual is at least 18 years of age. Such  
3014 identification is not required from an individual whom the person has reason to believe is at least 18  
3015 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was  
3016 shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years  
3017 of age shall be a defense to any action brought under this subsection. In determining whether a person  
3018 had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not  
3019 limited to, proof of the general appearance, facial characteristics, behavior and manner of the individual.  
3020 This subsection shall not apply to mail order sales.

3021 D. A violation of subsection A or C by an individual or by a separate retail establishment that  
3022 involves a tobacco product other than a bidi shall be punishable by a civil penalty not to exceed \$100  
3023 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to  
3024 exceed \$500 for a third or subsequent violation.

3025 A violation of subsection A or C by an individual or by a separate retail establishment that involves  
3026 the sale, distribution or purchase of a bidi shall be punishable by a civil penalty in the amount of \$500  
3027 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in  
3028 the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers  
3029 proof that it has trained its employees concerning the requirements of this section, the court shall  
3030 suspend all of the penalties imposed hereunder. However, where the court finds that a retail  
3031 establishment has failed to so train its employees, the court may impose a civil penalty not to exceed  
3032 \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a  
3033 tobacco product other than a bidi.

3034 A violation of subsection B shall be punishable by a civil penalty not to exceed \$100 for a first  
3035 violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as  
3036 an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to  
3037 20 hours of community service for a first violation of subsection B and up to 40 hours of community  
3038 service for a second or subsequent violation. If the defendant fails or refuses to complete the community  
3039 service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the  
3040 judge may enter an order pursuant to subdivision A 9 of § 16.1-278.8.

3041 Any attorney for the Commonwealth of the county or city in which an alleged violation occurred  
3042 may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any  
3043 law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

3044 E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the  
3045 required health warning. The proprietor of every retail establishment which offers for sale any tobacco  
3046 product, including but not limited to cigarettes, cigars, and bidis, shall post in a conspicuous manner and  
3047 place a sign or signs indicating that the sale of tobacco products, including wrappings, to any person  
3048 under 18 years of age is prohibited by law. Any attorney for the county, city or town in which an  
3049 alleged violation of this subsection occurred may enforce this subsection by civil action to recover a  
3050 civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or  
3051 other fee or cost shall be charged to the county, city or town which instituted the action.

3052 2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health  
3053 Services Administration published at 61 Federal Register 1492, the Department of Agriculture and  
3054 Consumer Services may promulgate regulations which allow the Department to undertake the activities  
3055 necessary to comply with such regulations.

3056 3. Any attorney for the county, city or town in which an alleged violation of this subsection occurred  
3057 may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil  
3058 penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the  
3059 county, city or town which instituted the action.

3060 F. Nothing in this section shall be construed to create a private cause of action.

3061 G. Agents of the Virginia Alcoholic Beverage Control ~~Board~~ Authority designated pursuant to  
3062 § 4.1-105 may issue a summons for any violation of this section.

3063 H. As used in this section:

3064 "Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*)  
3065 or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as  
3066 a bidi or beedie; and

3067 "Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for  
3068 smoking in a manner similar to a cigarette or cigar.

3069 **§ 19.2-81. Arrest without warrant authorized in certain cases.**

3070 A. The following officers shall have the powers of arrest as provided in this section:

3071 1. Members of the State Police force of the Commonwealth;

3072 2. Sheriffs of the various counties and cities, and their deputies;

3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;

4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900;

5. Regular conservation police officers appointed pursuant to § 29.1-200;

6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests;

7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in uniform, or displaying a badge of office;

8. Conservation officers appointed pursuant to § 10.1-115;

9. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217;

10. Special agents of the ~~Department of~~ Virginia Alcoholic Beverage Control Authority; and

11. Campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23.

B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Such officers may arrest without a warrant any person whom the officer has probable cause to suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of § 29.1-738 or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in violation of an order issued pursuant to § 29.1-738.4 and may thereafter transfer custody of the person arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

C. (Effective until July 1, 2014) Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident " shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

C. (Effective July 1, 2014) Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-733.2 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or subsection B of § 29.1-738; or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to § 29.1-738.4, whether or not the offense was committed in such officer's presence.

E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance,

3134 (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)  
3135 brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of  
3136 § 18.2-137, when such property is located on premises used for business or commercial purposes, or a  
3137 similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of  
3138 the person who observed the alleged offense. The arresting officer may issue a summons to any person  
3139 arrested under this section for a misdemeanor violation involving shoplifting.

3140 **§ 19.2-386.21. Forfeiture of counterfeit and contraband cigarettes.**

3141 Counterfeit cigarettes possessed in violation of § 18.2-246.14 and cigarettes possessed in violation of  
3142 § 58.1-1017 or 58.1-1017.1 shall be subject to seizure, forfeiture, and destruction by the Virginia  
3143 Alcoholic Beverage Control Board Authority or any law-enforcement officer of the Commonwealth. All  
3144 fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or  
3145 possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ 18.2-246.6 et  
3146 seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional  
3147 violation of § 58.1-1017 or 58.1-1017.1 shall be subject to seizure and forfeiture according to the  
3148 procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied mutatis mutandis.

3149 **§ 19.2-389. Dissemination of criminal history record information.**

3150 A. Criminal history record information shall be disseminated, whether directly or through an  
3151 intermediary, only to:

3152 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
3153 purposes of the administration of criminal justice and the screening of an employment application or  
3154 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
3155 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
3156 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
3157 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

3158 2. Such other individuals and agencies that require criminal history record information to implement  
3159 a state or federal statute or executive order of the President of the United States or Governor that  
3160 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such  
3161 conduct, except that information concerning the arrest of an individual may not be disseminated to a  
3162 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the  
3163 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is  
3164 pending;

3165 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide  
3166 services required for the administration of criminal justice pursuant to that agreement which shall  
3167 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the  
3168 security and confidentiality of the data;

3169 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities  
3170 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,  
3171 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and  
3172 security of the data;

3173 5. Agencies of state or federal government that are authorized by state or federal statute or executive  
3174 order of the President of the United States or Governor to conduct investigations determining  
3175 employment suitability or eligibility for security clearances allowing access to classified information;

3176 6. Individuals and agencies where authorized by court order or court rule;

3177 7. Agencies of any political subdivision of the Commonwealth, public transportation companies  
3178 owned, operated or controlled by any political subdivision, and any public service corporation that  
3179 operates a public transit system owned by a local government for the conduct of investigations of  
3180 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is  
3181 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a  
3182 conviction record would be compatible with the nature of the employment, permit, or license under  
3183 consideration;

3184 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)  
3185 and their contractors, for the conduct of investigations of individuals who have been offered a position  
3186 of employment whenever, in the interest of public welfare or safety and as authorized in the  
3187 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person  
3188 with a conviction record would be compatible with the nature of the employment under consideration;

3189 8. Public or private agencies when authorized or required by federal or state law or interstate  
3190 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
3191 adult members of that individual's household, with whom the agency is considering placing a child or  
3192 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
3193 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
3194 the data shall not be further disseminated to any party other than a federal or state authority or court as  
3195 may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day care homes or homes approved by family day care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

3257 25. Members of a threat assessment team established by a public institution of higher education  
3258 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of  
3259 assessing or intervening with an individual whose behavior may present a threat to safety; however, no  
3260 member of a threat assessment team shall redisclose any criminal history record information obtained  
3261 pursuant to this section or otherwise use any record of an individual beyond the purpose that such  
3262 disclosure was made to the threat assessment team;

3263 26. Executive directors of community services boards or the personnel director serving the  
3264 community services board for the purpose of determining an individual's fitness for employment  
3265 pursuant to §§ 37.2-506 and 37.2-607;

3266 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
3267 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

3268 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
3269 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
3270 name, address, demographics and social security number of the data subject shall be released;

3271 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
3272 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
3273 purpose of determining if any applicant who accepts employment in any direct care position has been  
3274 convicted of a crime that affects his fitness to have responsibility for the safety and well-being of  
3275 individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416,  
3276 37.2-506, and 37.2-607;

3277 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
3278 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
3279 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

3280 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
3281 for the purpose of determining if any person being considered for election to any judgeship has been  
3282 convicted of a crime;

3283 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
3284 determining an individual's fitness for employment in positions designated as sensitive under Department  
3285 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal  
3286 history record information to the agencies shall be limited to those positions generally described as  
3287 directly responsible for the health, safety and welfare of the general populace or protection of critical  
3288 infrastructures;

3289 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
3290 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
3291 Violent Predators Act (§ 37.2-900 et seq.);

3292 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
3293 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
3294 companies, for the conduct of investigations of applications for employment or for access to facilities,  
3295 by contractors, leased laborers, and other visitors;

3296 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
3297 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

3298 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
3299 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
3300 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
3301 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
3302 than a federal or state authority or court as may be required to comply with an express requirement of  
3303 law for such further dissemination, subject to limitations set out in subsection G;

3304 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
3305 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
3306 or have accepted a position related to the provision of transportation services to enrollees in the  
3307 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
3308 program administered by the Department of Medical Assistance Services;

3309 38. The State Corporation Commission for the purpose of investigating individuals who are current  
3310 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
3311 Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an  
3312 application is denied based in whole or in part on information obtained from the Central Criminal  
3313 Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee  
3314 may disclose such information to the applicant or its designee;

3315 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
3316 individuals for initial licensure pursuant to § 54.1-2106.1;

3317 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
3318 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment

and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

#### **§ 22.1-206. Instruction concerning drugs, alcohol, and substance abuse.**

A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed by the Board of Education.

B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking, and drunk driving shall be provided in the public schools. The ~~Department of Virginia~~ Alcoholic Beverage Control *Authority* shall provide educational materials to the Department of Education. The Department of Education shall review and shall distribute such materials as are approved to the public schools.

**§ 23-7.4:1. Waiver of tuition and certain charges and fees for eligible children and spouses of certain military service members, eligible children and spouses of certain public safety personnel, and certain foreign students.**

A. There is hereby established the Virginia Military Survivors and Dependents Education Program. Qualified survivors and dependents of military service members, who have been admitted to any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia, upon certification to the Commissioner of the Department of Veterans Services of eligibility under this subsection, shall be admitted free of tuition and all required fees.

The Virginia Military Survivors and Dependents Education Program shall be implemented pursuant to the following:

1. For the purposes of this subsection, "qualified survivors and dependents" means the spouse or a child between the ages of 16 and 29 of a military service member who, while serving as an active duty member in the United States Armed Forces, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war, or of a veteran who, due to such service, has been rated by the United States Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled, and has been discharged or released under conditions other than dishonorable. However, the Commissioner of the Department of Veterans Services may certify dependents above the age of 29 in those cases in which extenuating circumstances prevented the dependent child from using his benefits before the age of 30.

2. Such qualified survivors and dependents shall be eligible for the benefits conferred by this subsection if the military service member who was killed, is missing in action, is a prisoner of war, or is disabled (i) was a bona fide domiciliary of Virginia at the time of entering such active military service or called to active duty as a member of the Armed Forces Reserves or Virginia National Guard Reserve; (ii) is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to the date on which the admission application was submitted by or on behalf of such qualified survivor or dependent for admission to such institution of higher education or other public accredited postsecondary institution; (iii) if deceased, was a bona fide domiciliary of Virginia on the date of his death and had been a bona fide domiciliary of Virginia for at least five years immediately prior to his death; (iv) in the case of a qualified child, is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to the date on which the admission application was submitted by or on behalf of such child; or (v) in the case of a qualified spouse, is deceased and the surviving spouse had been, at some time previous to marrying the deceased spouse, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years prior to the date on which the admission application was submitted by such qualified spouse.

3. From such funds as may be appropriated and from such gifts, bequests, and any gifts, grants, or donations from public or private sources, there is hereby established the Virginia Military Survivors and Dependents Education Fund for the sole purpose of providing financial assistance, in an amount (i) up to \$2,000 or (ii) as provided in the appropriation act, for board and room charges, books and supplies, and other expenses at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia for the use and benefit of qualified survivors and dependents.

Each year, from the funds available in the Virginia Military Survivors and Dependents Education Fund, the State Council of Higher Education for Virginia and its member institutions shall determine the amount and the manner in which financial assistance shall be made available to beneficiaries and shall make that information available to the Commissioner of the Department of Veterans Services for distribution.

The State Council of Higher Education for Virginia shall be responsible for disbursing to the institutions the funds appropriated or otherwise made available by the Commonwealth of Virginia to support the Virginia Military Survivors and Dependents Education Fund and shall report to the Commissioner of the Department of Veterans Services the beneficiaries' completion rate.

The maximum amount to be expended for each such survivor or dependent pursuant to this subsection shall not exceed, when combined with any other form of scholarship, grant, or waiver, the actual costs related to the survivor's or dependent's educational expenses allowed under this subsection.

4. The Commissioner of the Department of Veterans Services shall designate a senior-level official who shall be responsible for developing and implementing the agency's strategy for disseminating information about the Military Survivors and Dependents Education Program to those spouses and dependents who may qualify. The Department of Veterans Services shall coordinate with the United



States Department of Veterans Affairs to identify veterans and qualified survivors and dependents. The Commissioner of the Department of Veterans Services shall report annually to the Governor and the General Assembly as to the agency's policies and strategies relating to dissemination of information about the Program. The report shall also include the number of current beneficiaries, the educational institutions attended by beneficiaries, and the completion rate of the beneficiaries.

B. The surviving spouse and any child between the ages of 16 and 25 whose parent or whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, including as a campus police officer appointed under Chapter 17 (§ 23-232 et seq.), sworn law-enforcement officer, firefighter, special forest warden pursuant to § 10.1-1135, member of a rescue squad, special agent of the ~~Department of Virginia~~ Alcoholic Beverage Control *Authority*, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, or deputy sheriff, member of the Virginia National Guard while serving on official state duty or federal duty under Title 32 of the United States Code, or member of the Virginia Defense Force while serving on official state duty, and any person whose spouse was killed in the line of duty while employed or serving in any of such occupations, shall be entitled to free undergraduate tuition and the payment of required fees at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia under the following conditions:

1. The chief administrative officer of the *Virginia Alcoholic Beverage Control Board Authority*, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer, sworn law-enforcement officer, firefighter, special forest warden pursuant to § 10.1-1135, or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to such public institution of higher education or other public accredited postsecondary institution. Any child or spouse who believes he is eligible shall apply to the public institution of higher education or other accredited postsecondary institution to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition, institutional charges and required fees, and books and supplies for the applicants shall be waived by the institution accepting the students.

C. For the purposes of subsection B, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required educational and auxiliary fees shall be waived along with tuition.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution, provided the number of foreign students does not exceed the number of students paying full tuition and required fees to the institution under the provisions of the exchange program for a given three-year period.

E. Each public institution of higher education and other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia shall include in its catalogue or equivalent publication a statement describing the benefits provided by subsections A and B.

**§ 32.1-357. Board of Trustees; appointment; officers; quorum; executive committee; compensation and expenses.**

A. The Foundation shall be governed and administered by a Board of Trustees consisting of 23 members. Two members shall be appointed by the Speaker of the House of Delegates from among the membership of the House of Delegates, one representing rural interests and one representing urban interests; two members shall be appointed by the Senate Committee on Rules, one representing rural interests and one representing urban interests, from among the membership of the Senate; two members shall be the Commissioner of the Department of Health or his designee and the ~~Chairman~~ *chairman* of the *board of directors of the Virginia Alcoholic Beverage Control Board Authority* or his designee; and 17 nonlegislative citizen members shall be appointed by the Governor, subject to confirmation by the General Assembly, as follows: (i) five designated representatives of public health organizations, such as the American Cancer Society, American Heart Association, Virginia Pediatric Society, Virginia Academy of Family Physicians, Virginia Dental Association, American Lung Association of Virginia, Medical Society of Virginia, Virginia Association of School Nurses, Virginia Nurses Association, and the Virginia Thoracic Society; (ii) four health professionals in the fields of oncology, cardiology, pulmonary medicine, and pediatrics; and (iii) eight citizens at large, including two youths. Of the eight citizen at large members, three adults shall be appointed by the Governor from a list of six provided by members of the General Assembly appointed to the Foundation and one member who is under the age of 18 years shall be appointed by the Governor from a list of three provided by the members of the General

3503 Assembly appointed to the Foundation.

3504 Legislative members and the Commissioner of the Department of Health and the ~~Chairman~~ *chairman*  
 3505 of the *board of directors of the Virginia Alcoholic Beverage Control Board Authority* shall serve terms  
 3506 coincident with their terms of office. Following the initial staggering of terms, nonlegislative citizen  
 3507 members shall serve four-year terms. Vacancies in the membership of the Board shall be filled by  
 3508 appointment for the unexpired portion of the term. Vacancies shall be filled in the same manner as the  
 3509 original appointments. Legislative members may be reappointed for successive terms. No nonlegislative  
 3510 citizen member shall be eligible to serve for more than two successive four-year terms; however, after  
 3511 the expiration of a term of three years or less, or after the expiration of the remainder of a term to  
 3512 which he was appointed to fill a vacancy, two additional terms may be served by such member if  
 3513 appointed thereto. Immediately after such appointment, the members shall enter upon the performance of  
 3514 their duties.

3515 B. The Foundation shall appoint from the membership of the Board a chairman and vice-chairman,  
 3516 both of whom shall serve in such capacities at the pleasure of the Foundation. The chairman, or in his  
 3517 absence, the vice-chairman, shall preside at all meetings of the Board. A majority of the members of the  
 3518 Board serving at any one time shall constitute a quorum for the transaction of business. The Board shall  
 3519 meet annually or more frequently at the call of the chairman.

3520 The Board may establish an executive committee composed of the chairman, vice-chairman, and  
 3521 three additional members elected by the Board from its membership. The chairman of the Board shall  
 3522 serve as the chairman of the executive committee and shall preside over its meetings. In the absence of  
 3523 the chairman, the vice-chairman shall preside. The executive committee may exercise the powers and  
 3524 transact the business of the Board in the absence of the Board or when otherwise directed or authorized  
 3525 by the Board. A majority of the members of the executive committee shall constitute a quorum for the  
 3526 transaction of business. Any actions or business conducted by the executive committee shall be acted  
 3527 upon by the full board as soon as practicable.

3528 C. Legislative members shall receive such compensation as provided in § 30-19.12 and nonlegislative  
 3529 citizen members shall receive compensation as provided in § 2.2-2813 for their services. All members  
 3530 shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties  
 3531 as provided by §§ 2.2-2813 and 2.2-2825. Such compensation and expenses shall be paid from the Fund.

3532 D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth  
 3533 shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance  
 3534 of membership on the Board or his service to the Foundation.

3535 E. Members of the Board and employees of the Foundation shall be subject to the standards of  
 3536 conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and  
 3537 may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct  
 3538 in the manner set forth therein.

3539 **§ 33.1-252. Free use of toll facilities by certain state officers and employees; penalties.**

3540 A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of  
 3541 the Dulles Toll Road during rush hours by the Commonwealth Transportation Board; however,  
 3542 notwithstanding the provisions of subdivision B 1 of § 56-543 said vehicles shall not be permitted  
 3543 toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988  
 3544 (§ 56-535 et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the  
 3545 Commonwealth Transportation Board, the following persons may use all toll bridges, toll ferries, toll  
 3546 tunnels, and toll roads in this Commonwealth without the payment of toll while in the performance of  
 3547 their official duties:

- 3548 1. The Commissioner of Highways;
- 3549 2. Members of the Commonwealth Transportation Board;
- 3550 3. Employees of the Virginia Department of Transportation;
- 3551 4. The Superintendent of the Department of State Police;
- 3552 5. Officers and employees of the Department of State Police;
- 3553 6. Members of the *board of directors of the Virginia Alcoholic Beverage Control Board Authority*;
- 3554 7. Employees of the regulatory and hearings divisions of the ~~Department of Virginia Alcoholic~~  
 3555 *Beverage Control Authority* and special agents of the ~~Department of Virginia Alcoholic Beverage~~  
 3556 *Control Authority*;
- 3557 8. The Commissioner of the Department of Motor Vehicles;
- 3558 9. Employees of the Department of Motor Vehicles;
- 3559 10. Local police officers;
- 3560 11. Sheriffs and their deputies;
- 3561 12. Regional jail officials;
- 3562 13. Animal wardens;
- 3563 14. The Director and officers of the Department of Game and Inland Fisheries;
- 3564 15. Persons operating fire-fighting equipment and ambulances owned by a political subdivision of the

Commonwealth or a nonprofit association or corporation;

16. Operators of school buses being used to transport pupils to or from schools;

17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;

18. Employees of the Department of Rail and Public Transportation;

19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and

20. Law-enforcement officers of the Virginia Marine Resources Commission.

Notwithstanding the foregoing provision of this subsection requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.

a. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner or his designee.

b. Major incidents that may require the temporary suspension of toll collection operations shall include, but not necessarily be limited to (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic accidents such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

c. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed \$2,000 for any individual incident, be paid to the Department for deposit into the toll road fund.

B. Any tollgate keeper who shall refuse to permit the persons listed in subsection A of this section to pass through such tollgate or over such toll bridge or ferry, or toll road or toll tunnel upon presentation of such a toll pass, shall be guilty of a misdemeanor and punished by a fine of not more than \$50, and not less than \$2.50. Any person other than those listed in subsection A who shall exhibit any such toll pass for the purpose of using any toll bridge, toll tunnel or ferry shall be guilty of a Class 1 misdemeanor and punished accordingly.

B1. Any vehicle operated by the holder of a valid driver's license issued by Virginia or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in Virginia if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;

2. The driver of the vehicle has been certified, either by a physician licensed by Virginia or any other state or by the Adjudication Office of the United States Veterans Administration, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments which substantially impair his ability to deposit coins in toll baskets;

3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and

4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in Virginia. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

C. Nothing contained in this section or in § 33.1-251 or 33.1-285 shall operate to affect the provisions of § 22.1-187.

D. Notwithstanding the provisions of subsections A and B, only the following persons may use the Chesapeake Bay Bridge-Tunnel, facilities of the Richmond Metropolitan Authority, or facilities of an operator authorized to operate a toll facility pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commissioner of Highways;

2. Members of the Commonwealth Transportation Board;

3. Employees of the Department of Transportation;

4. The Superintendent of the Department of State Police;

5. Officers and employees of the Department of State Police;

6. The Commissioner of the Department of Motor Vehicles;

7. Employees of the Department of Motor Vehicles; and

8. Sheriffs and deputy sheriffs.

E. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in

3626 Virginia controlled by the Richmond Metropolitan Authority, pursuant to the requirements of  
3627 subdivisions 1 through 4 of subsection B1.

3628 **§ 48-17.1. Temporary injunctions against alcoholic beverage sales.**

3629 A. Any locality by or through its mayor, chief executive, or attorney may petition a circuit court to  
3630 temporarily enjoin the sale of alcohol at any establishment licensed by the *Virginia* Alcoholic Beverage  
3631 Control ~~Board~~ *Authority*. The basis for such petition shall be the operator of the establishment has  
3632 allowed it to become a meeting place for persons committing serious criminal violations of the law on  
3633 or immediately adjacent to the premises so frequent and serious as to be deemed a continuing threat to  
3634 public safety, as represented in an affidavit by the chief law-enforcement officer of the locality,  
3635 supported by records of such criminal acts. The court shall, upon the presentation of evidence at a  
3636 hearing on the matter, grant a temporary injunction, without bond, enjoining the sale of alcohol at the  
3637 establishment, if it appears to the satisfaction of the court that the threat to public safety complained of  
3638 exists and is likely to continue if such injunction is not granted. The court hearing on the petition shall  
3639 be held within 10 days of service upon the respondent. The respondent shall be served with notice of  
3640 the time and place of the hearing and copies of all documentary evidence to be relied upon by the  
3641 complainant at such hearing. Any injunction issued by the court shall be dissolved in the event the court  
3642 later finds that the threat to public safety that is the basis of the injunction has been abated by reason of  
3643 a change of ownership, management, or business operations at the establishment, or other change in  
3644 circumstance.

3645 B. The *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* shall be given notice of any hearing  
3646 under this section. In the event an injunction is granted, the *Virginia* Alcoholic Beverage Control ~~Board~~  
3647 *Authority* shall initiate an investigation into the activities at the establishment complained of and conduct  
3648 an administrative hearing. After the *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority* hearing and  
3649 when a final determination has been issued by the *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority*,  
3650 regardless of disposition, any injunction issued hereunder shall be null, without further action by the  
3651 complainant, respondent, or the court.

3652 **§ 51.1-212. Definitions.**

3653 As used in this chapter, unless the context requires a different meaning:

3654 "Employee" means any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii)  
3655 campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23, (iii)  
3656 conservation police officer in the Department of Game and Inland Fisheries appointed under the  
3657 provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the ~~Department of~~  
3658 *Virginia* Alcoholic Beverage Control *Authority* appointed under the provisions of Chapter 1 (§ 4.1-100 et  
3659 seq.) of *Title 4.1*, (v) law-enforcement officer employed by the Virginia Marine Resources Commission  
3660 as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including  
3661 correctional officers employed at a juvenile correction facility as the term is defined in § 66-25.3, (vii)  
3662 any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement  
3663 officer employed by the Department of State Police.

3664 "Member" means any person included in the membership of the Retirement System as provided in  
3665 this chapter.

3666 "Normal retirement date" means a member's sixtieth birthday.

3667 "Retirement System" means the Virginia Law Officers' Retirement System.

3668 **§ 58.1-3. Secrecy of information; penalties.**

3669 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax  
3670 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or  
3671 revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-512  
3672 or 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge  
3673 any information acquired by him in the performance of his duties with respect to the transactions,  
3674 property, including personal property, income or business of any person, firm or corporation. Such  
3675 prohibition specifically includes any copy of a federal return or federal return information required by  
3676 Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any  
3677 reports, returns, financial documents or other information filed with the Attorney General pursuant to the  
3678 provisions of Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2. Any person violating the  
3679 provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection  
3680 shall not be applicable, however, to:

3681 1. Matters required by law to be entered on any public assessment roll or book;

3682 2. Acts performed or words spoken, published, or shared with another agency or subdivision of the  
3683 Commonwealth in the line of duty under state law;

3684 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a  
3685 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to  
3686 its study, provided that any such information obtained shall be privileged;

3687 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any

information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly;

7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ 3.2-4204 et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § 3.2-4201 and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § 3.2-4206 and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § 3.2-4209. If the manufacturer does not receive the reports pursuant to subsection C of § 3.2-4209, the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Virginia Alcoholic Beverage Control Board Authority, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the

3749 Commissioner of the Department of Agriculture and Consumer Services such tax information as may be  
3750 necessary to identify those applicants for registration as a supplier of charitable gaming supplies who  
3751 have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing  
3752 and Community Development for its confidential use such tax information as may be necessary to  
3753 facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270  
3754 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and  
3755 address information to private collectors entering into a written agreement with the Tax Commissioner,  
3756 for their confidential use when acting on behalf of the Commonwealth or any of its political  
3757 subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private  
3758 collector who has used or disseminated in an unauthorized or prohibited manner any such information  
3759 previously provided to such collector; (xiv) provide current name and address information as to the  
3760 identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any  
3761 person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for  
3762 injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or  
3763 Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering  
3764 into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid  
3765 wages under § 40.1-29; (xvi) provide to the Director of the Department of Human Resource  
3766 Management, upon entering into a written agreement, such tax information as may be necessary to  
3767 identify persons receiving workers' compensation indemnity benefits who have failed to report earnings  
3768 as required by § 65.2-712; (xvii) provide to any commissioner of the revenue, director of finance, or any  
3769 other officer of any county, city, or town performing any or all of the duties of a commissioner of the  
3770 revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list  
3771 of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii)  
3772 provide to the Executive Director of the Northern Virginia Transportation Commission for his  
3773 confidential use such tax information as may be necessary to facilitate the collection of the motor  
3774 vehicle fuel sales tax; and (xix) provide to the Commissioner of Agriculture and Consumer Services the  
3775 name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as  
3776 subject to regulation by the Board of Agriculture and Consumer Services pursuant to § 3.2-5130. The  
3777 Tax Commissioner is further authorized to enter into written agreements with duly constituted tax  
3778 officials of other states and of the United States for the inspection of tax returns, the making of audits,  
3779 and the exchange of information relating to any tax administered by the Department of Taxation. Any  
3780 person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions  
3781 and penalties prescribed herein as though he were a tax official.

3782 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the  
3783 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request  
3784 stating the reason for such request, the chief executive officer of any county or city with information  
3785 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of  
3786 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the  
3787 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of  
3788 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross  
3789 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a  
3790 profession or occupation administered by the Department of Professional and Occupational Regulation,  
3791 only after the Department of Professional and Occupational Regulation exhausts all other means of  
3792 obtaining such information; and (iii) provide to any representative of a condominium unit owners'  
3793 association, property owners' association or real estate cooperative association, or to the owner of  
3794 property governed by any such association, the names and addresses of parties having a security interest  
3795 in real property governed by any such association; however, such information shall be released only  
3796 upon written request stating the reason for such request, which reason shall be limited to proposing or  
3797 opposing changes to the governing documents of the association, and any information received by any  
3798 person under this subsection shall be used only for the reason stated in the written request. The treasurer  
3799 or other local assessing official may require any person requesting information pursuant to clause (iii) of  
3800 this subsection to pay the reasonable cost of providing such information. Any person to whom tax  
3801 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties  
3802 prescribed herein as though he were a tax official.

3803 Notwithstanding the provisions of subsection A or B or any other provisions of this title, the  
3804 treasurer or other collector of taxes for a county, city or town is authorized to provide information  
3805 relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course  
3806 of performing his duties to the commissioner of the revenue or other assessing official for such  
3807 jurisdiction for use by such commissioner or other official in performing assessments.

3808 This section shall not be construed to prohibit a local tax official from imprinting or displaying on a  
3809 motor vehicle local license decal the year, make, and model and any other legal identification  
3810 information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § 58.1-512. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

**§ 58.1-3651. Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003.**

A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;

2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control ~~Board~~ *Authority* to such organization, for use on such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

3872 D. Exemptions of property from taxation under this article shall be strictly construed in accordance  
3873 with Article X, Section 6 (f) of the Constitution of Virginia.

3874 E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the  
3875 validity of either a classification exemption or a designation exemption granted by the General Assembly  
3876 prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), 3 (§ 58.1-3609 et seq.) or 4  
3877 (§ 58.1-3650 et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ 58.1-3650 et seq.) of  
3878 this chapter may be revoked in accordance with the provisions of § 58.1-3605.

3879 **§ 59.1-148.3. Purchase of handguns of certain officers.**

3880 A. The Department of State Police, the Department of Game and Inland Fisheries, the ~~Department of~~  
3881 *Virginia Alcoholic Beverage Control Authority*, the State Lottery Department, the Marine Resources  
3882 Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of  
3883 Forestry, any sheriff, any regional jail board or authority and any local police department may allow any  
3884 full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may  
3885 allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any  
3886 law-enforcement officer, and any institution of higher learning named in § 23-14 may allow any  
3887 campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23, retiring on or  
3888 after July 1, 1991, who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or  
3889 (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a  
3890 service-incurred disability with no expectation of returning to the employment where he incurred the  
3891 disability to purchase the service handgun issued or previously issued to him by the agency or institution  
3892 at a price of \$1. If the previously issued weapon is no longer available, a weapon of like kind may be  
3893 substituted for that weapon. This privilege shall also extend to any former Superintendent of the  
3894 Department of State Police who leaves service after a minimum of five years. This privilege shall also  
3895 extend to any person listed in this subsection who is eligible for retirement with at least 10 years of  
3896 service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this  
3897 section to accept a position covered by the Virginia Retirement System. Other weapons issued by the  
3898 Department of State Police for personal duty use of an officer, may, with approval of the  
3899 Superintendent, be sold to the officer subject to the qualifications of this section at a fair market price  
3900 determined as in subsection B, so long as the weapon is a type and configuration that can be purchased  
3901 at a regular hardware or sporting goods store by a private citizen without restrictions other than the  
3902 instant background check.

3903 B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who  
3904 retires with 5 or more years of service, but less than 10, to purchase the service handgun issued to him  
3905 by the agency at a price equivalent to the weapon's fair market value on the date of the officer's  
3906 retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in  
3907 subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the  
3908 service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on  
3909 the date of the officer's retirement. Determinations of fair market value may be made by reference to a  
3910 recognized pricing guide.

3911 C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn  
3912 law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least  
3913 10 years of service to purchase the service handgun issued to the officer by the agency at a price of \$1.

3914 D. The governing board of any institution of higher learning named in § 23-14 may allow any  
3915 campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 who retires on or  
3916 after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's  
3917 fair market value on the date of the officer's retirement. Determinations of fair market value may be  
3918 made by reference to a recognized pricing guide.

3919 E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a  
3920 state agency listed in subsection A, when the agency allows purchases of service handguns, and who  
3921 retires after 10 years of state service, even if a portion of his service was with another state agency, may  
3922 purchase the service handgun issued to him by the agency from which he retires at a price of \$1.

3923 F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a  
3924 minimum of 10 years of service, upon leaving office, to purchase for \$1 the service handgun issued to  
3925 him.

3926 G. Any sheriff or local police department, in accordance with written authorization or approval from  
3927 the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of  
3928 service to purchase the service handgun issued to him by the agency at a price that is equivalent to or  
3929 less than the weapon's fair market value on the date of purchase by the officer.

3930 H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer  
3931 currently employed by the agency to purchase his service handgun, with the approval of the chief  
3932 law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the  
3933 agency has purchased new service handguns for its officers, and the handgun subject to the sale is no



longer used by the agency or officer in the course of duty.

**§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.**

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the Department of Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force established and maintained by the Virginia Port Authority, and (xiv) campus police officers appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public institution of higher education shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

3995 H. For purposes of this section, the term "firefighter" shall include special forest wardens designated  
3996 pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers  
3997 primarily to perform firefighting services.

3998 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

3999 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health  
4000 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,  
4001 paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement  
4002 System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v)  
4003 Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city  
4004 sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer  
4005 who is a full-time sworn member of the enforcement division of the Department of Game and Inland  
4006 Fisheries, (ix) Capitol Police officer, (x) special agent of the Department of Virginia Alcoholic Beverage  
4007 Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for  
4008 such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the  
4009 provisions of this chapter as provided in § 65.2-305, officer of the police force established and  
4010 maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force  
4011 established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the  
4012 Department of Conservation and Recreation commissioned pursuant to § 10.1-115, (xiv) sworn officer of  
4013 the police force established and maintained by the Virginia Port Authority, or (xv) any campus police  
4014 officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 and employed by any public  
4015 institution of higher education, who has a documented occupational exposure to blood or body fluids  
4016 shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered  
4017 by this title unless such presumption is overcome by a preponderance of competent evidence to the  
4018 contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall  
4019 be deemed "documented" if the person covered under this section gave notice, written or otherwise, of  
4020 the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002,  
4021 shall be deemed "documented" without regard to whether the person gave notice, written or otherwise,  
4022 of the occupational exposure to his employer.

4023 B. As used in this section:

4024 "Blood or body fluids" means blood and body fluids containing visible blood and other body fluids  
4025 to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as  
4026 established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis,  
4027 meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory,  
4028 salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which  
4029 infectious airborne or blood-borne organisms can be transmitted between persons.

4030 "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other  
4031 strain of hepatitis generally recognized by the medical community.

4032 "HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or  
4033 type II, causing immunodeficiency syndrome.

4034 "Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV,  
4035 means an exposure that occurs during the performance of job duties that places a covered employee at  
4036 risk of infection.

4037 C. Persons covered under this section who test positive for exposure to the enumerated occupational  
4038 diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to  
4039 make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical  
4040 examination to measure the progress of the condition, if any, and any other medical treatment,  
4041 prophylactic or otherwise.

4042 D. Whenever any standard, medically-recognized vaccine or other form of immunization or  
4043 prophylaxis exists for the prevention of a communicable disease for which a presumption is established  
4044 under this section, if medically indicated by the given circumstances pursuant to immunization policies  
4045 established by the Advisory Committee on Immunization Practices of the United States Public Health  
4046 Service, a person subject to the provisions of this section may be required by such person's employer to  
4047 undergo the immunization or prophylaxis unless the person's physician determines in writing that the  
4048 immunization or prophylaxis would pose a significant risk to the person's health. Absent such written  
4049 declaration, failure or refusal by a person subject to the provisions of this section to undergo such  
4050 immunization or prophylaxis shall disqualify the person from any presumption established by this  
4051 section.

4052 E. The presumptions described in subsection A shall only apply if persons entitled to invoke them  
4053 have, if requested by the appointing authority or governing body employing them, undergone  
4054 preemployment physical examinations that (i) were conducted prior to the making of any claims under  
4055 this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as  
4056 prescribed by the appointing authority or governing body employing such persons, (iii) included such

appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

F. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

2. That the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007 are amended and reenacted as follows:

4. That the *Virginia Alcoholic Beverage Control Board Authority* shall assist the Commissioner of Agriculture and Consumer Services in the formation and operation of the nonprofit, nonstock corporation established pursuant to § 3.1-14.01 of this act.

3. That §§ 4.1-101 and 4.1-102 of the Code of Virginia are repealed.

4. That the provisions of this act shall become effective on July 1, 2015.

5. That the regulations of the Alcoholic Beverage Control Board promulgated pursuant to Title 4.1 of the Code of Virginia shall be administered by the Virginia Alcoholic Beverage Control Authority and shall remain in full force and effect until altered, amended, or rescinded by the board of directors of the Virginia Alcoholic Beverage Control Authority.

6. That in the event that ex officio membership on any board, commission, council, committee, or other body is affected by the provisions of this act, the Governor shall designate an appropriate successor officer, employee, or member of a board or agency established pursuant to the provisions of this act as a replacement.

7. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

8. That as of the effective date of this act, the Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board to the extent this act transfers powers and duties. All right, title, and interest in and to real or tangible personal property vested in the Department of Alcoholic Beverage Control or the Alcoholic Beverage Control Board to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred and taken as standing in the name of the Virginia Alcoholic Beverage Control Authority.

9. That wherever in the Code of Virginia the term "Department of Alcoholic Beverage Control" is used, it shall be deemed to mean the Virginia Alcoholic Beverage Control Authority and wherever in the Code of Virginia the term "Alcoholic Beverage Control Board" is used, it shall mean the board of directors of the Virginia Alcoholic Beverage Control Authority.

10. That any accrued sick leave or annual leave of any employee of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee.