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SENATE BILL NO. 1751
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by Senator Ruff
on January 31, 2019)

(Patron Prior to Substitute—Senator Ruff)

A *BILL to amend and reenact §§ 19.2-389, 54.1-111, 54.1-113, 54.1-304, and 54.1-500 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 30-19.03:1.3; and to repeal Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1 and Chapter 23.4 (§§ 54.1-2355 through 54.1-2358) of Title 54.1 of the Code of Virginia, relating to professions and occupations.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 54.1-111, 54.1-113, 54.1-304, and 54.1-500 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-19.03:1.3 as follows:

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that 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 for the purposes of the administration of criminal justice;

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

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

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

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

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

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

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person

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60 with a conviction record would be compatible with the nature of the employment under consideration;

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

68 9. To the extent permitted by federal law or regulation, public service companies as defined in
69 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
70 personal contact with the public or when past criminal conduct of an applicant would be incompatible
71 with the nature of the employment under consideration;

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

74 11. A person requesting a copy of his own criminal history record information as defined in
75 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
76 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
77 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
78 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
79 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
80 Solvers or Crime Line program as defined in § 15.2-1713.1;

81 12. Administrators and board presidents of and applicants for licensure or registration as a child
82 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
83 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
84 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved
85 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,
86 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction
87 that the data shall not be further disseminated by the facility or agency to any party other than the data
88 subject, the Commissioner of Social Services' representative or a federal or state authority or court as
89 may be required to comply with an express requirement of law for such further dissemination;

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

93 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
94 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
95 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

100 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
101 investigations of applicants for compensated employment in licensed assisted living facilities and
102 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

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

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

108 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
109 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
110 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

121 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or

122 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
123 records information on behalf of such governing boards or administrators pursuant to a written
124 agreement with the Department of State Police;

125 24. Public institutions of higher education and nonprofit private institutions of higher education for
126 the purpose of screening individuals who are offered or accept employment;

127 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
128 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
129 higher education, for the purpose of assessing or intervening with an individual whose behavior may
130 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
131 history record information obtained pursuant to this section or otherwise use any record of an individual
132 beyond the purpose that such disclosure was made to the threat assessment team;

133 26. Executive directors of community services boards or the personnel director serving the
134 community services board for the purpose of determining an individual's fitness for employment,
135 approval as a sponsored residential service provider, or permission to enter into a shared living
136 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
137 §§ 37.2-506 and 37.2-607;

138 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
139 determining an individual's fitness for employment, approval as a sponsored residential service provider,
140 or permission to enter into a shared living arrangement with a person receiving medical assistance
141 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

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

145 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
146 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
147 purpose of determining if any applicant who accepts employment in any direct care position or requests
148 approval as a sponsored residential service provider or permission to enter into a shared living
149 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
150 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
151 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
152 37.2-607;

153 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
154 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
155 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

159 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
160 determining an individual's fitness for employment in positions designated as sensitive under Department
161 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

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

182 38. The State Corporation Commission for the purpose of investigating individuals who are current

183 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
184 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any
185 other provision of law, if an application is denied based in whole or in part on information obtained
186 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
187 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
188 its designee;

189 39. The Department of Professional and Occupational Regulation for the purpose of investigating
190 individuals for initial licensure pursuant to ~~§ 54.1-2106.1~~, certification, or registration pursuant to
191 Subtitle II (§ 54.1-200 et seq.) of Title 54.1;

192 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
193 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
194 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
195 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

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

203 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
204 a juvenile's household when completing a predispositional or postdispositional report required by
205 § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

206 45. Other entities as otherwise provided by law.

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

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

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

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

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

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

236 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
237 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange
238 for any offense specified in § 63.2-1720.

239 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
240 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
241 definition of barrier crime in § 19.2-392.02.

242 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
243 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
244 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in

245 the request to the employer or prospective employer making the request, provided that the person on
246 whom the data is being obtained has consented in writing to the making of such request and has
247 presented a photo-identification to the employer or prospective employer. In the event no conviction data
248 is maintained on the person named in the request, the requesting employer or prospective employer shall
249 be furnished at his cost a certification to that effect. The criminal history record search shall be
250 conducted on forms provided by the Exchange.

251 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
252 information pursuant to the rules of court for obtaining discovery or for review by the court.

253 **§ 30-19.03:1.3. Evaluations to be prepared for legislation increasing or beginning regulation of an**
254 **occupation.**

255 A. For the purposes of this section, "regulation" means any statement of general application, having
256 the force of law and affecting the rights or conduct of any person, adopted by an agency in accordance
257 with the authority conferred on it by the Constitution and applicable statutes of the Commonwealth.

258 B. When any legislative bill requiring the Department of Professional and Occupational Regulation
259 to increase or begin regulation of an occupation is filed during any session of the General Assembly,
260 the Board for Professional and Occupational Regulation (the Board) shall prepare an evaluation of the
261 legislation using the criteria outlined in § 54.1-311.

262 C. The Division of Legislative Services shall examine all bills filed during any legislative session for
263 the purpose of identifying and forwarding to the Board those bills requiring an evaluation pursuant to
264 this section.

265 As soon thereafter as may be practicable, the Board shall forward copies of such evaluations to the
266 Clerk of the House of Delegates for transmittal to each patron of the legislation and to the chairman of
267 each committee of the General Assembly to consider the same.

268 All departments, agencies of government, and the Division of Legislative Services are directed to
269 make available such information and assistance as the Board may request in preparing the evaluations
270 required by this section.

271 **§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.**

272 A. It shall be is unlawful for any person, partnership, corporation, or other entity to engage in any of
273 the following acts:

274 1. Practicing a profession or occupation without holding a valid license as required by statute or
275 regulation.

276 2. Making use of any designation provided by statute or regulation to denote a standard of
277 professional or occupational competence without being duly certified or licensed.

278 3. Making use of any titles, words, letters, or abbreviations which may reasonably be confused with
279 a designation provided by statute or regulation to denote a standard of professional or occupational
280 competence without being duly certified or licensed.

281 4. Performing any act or function which is restricted by statute or regulation to persons holding a
282 professional or occupational license or certification, without being duly certified or licensed.

283 5. Failing to register as a practitioner of a profession or occupation as required by statute or
284 regulation.

285 6. Materially misrepresenting facts in an application for licensure, certification, or registration.

286 7. Willfully refusing to furnish a regulatory board information or records required or requested
287 pursuant to statute or regulation.

288 8. Violating any statute or regulation governing the practice of any profession or occupation
289 regulated pursuant to this title.

290 9. Refusing to process a request, tendered in accordance with the regulations of the relevant health
291 regulatory board or applicable statutory law, for patient records or prescription dispensing records after
292 the closing of a business or professional practice or the transfer of ownership of a business or
293 professional practice.

294 B. Any person who willfully engages in any unlawful act enumerated in this section shall be is guilty
295 of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a
296 36-month period shall constitute constitutes a Class 6 felony. In addition, any person convicted of any
297 unlawful act enumerated in subdivision A 1 through 8 of this subsection, for conduct that is within the
298 purview of any regulatory board within the Department of Professional and Occupational Regulation,
299 may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

300 C. The Director of the Department of Professional and Occupational Regulation, or his designee,
301 may issue a notice to any person violating the provisions of subdivisions A 1 through 5 or A 8 to cease
302 and desist such activity.

303 B. D. In addition to the criminal penalties provided for in subsection A B, the Department of
304 Professional and Occupational Regulation or the Department of Health Professions, without compliance
305 with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the

306 provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership,
 307 corporation or any other entity from engaging in any unlawful act enumerated in this section and to
 308 recover a civil penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act
 309 constituting a separate violation; but in no event shall the civil penalties against any one person,
 310 partnership, corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in
 311 the name of the Commonwealth by the appropriate Department in the circuit court or general district
 312 court of the city or county in which the unlawful act occurred or in which the defendant resides.

313 ~~C.~~ E. This section shall not be construed to prohibit or prevent the owner of patient records from (i)
 314 retaining copies of his patient records or prescription dispensing records after the closing of a business
 315 or professional practice or the transfer of ownership of a business or professional practice or (ii)
 316 charging a reasonable fee, in accordance with subsections B2, B3, B4, and B6 of § 8.01-413 or
 317 subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

318 ~~D.~~ F. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be
 319 construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which
 320 employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or
 321 engaging in the practice of a profession or occupation for which such individual is licensed, (ii)
 322 providing or rendering professional services related thereto through the licensed individual, or (iii)
 323 having a legitimate interest in enforcing the terms of employment or its contract with the licensed
 324 individual.

325 ~~E.~~ G. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure
 326 privilege to practice nursing in the Commonwealth of Virginia.

327 **§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of**
 328 **health regulatory boards prohibited.**

329 A. *Following the close of any biennium, when the account for any regulatory board within the*
 330 *Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that*
 331 *unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to*
 332 *the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i)*
 333 *distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for*
 334 *certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not*
 335 *excessive to cover expenses.*

336 B. *Following the close of any biennium, when the account for any regulatory board within the*
 337 *Department of Professional and Occupational Regulation or the Department of Health Professions*
 338 *maintained under § 54.1-308 or 54.1-2505 shows expenses allocated to it for the past biennium to be*
 339 *more than 10 percent greater or less than moneys collected on behalf of the regulatory board, it shall*
 340 *revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that*
 341 *the fees are sufficient but not excessive to cover expenses.*

342 ~~B.~~ C. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and
 343 accounted for and deposited into a special fund by the Director of the Department of Health Professions
 344 shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners'
 345 Monitoring Program, and the Department and Board of Health Professions and shall not be transferred
 346 to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1
 347 and 54.1-3011.2.

348 **§ 54.1-304. Powers and duties of the Director with respect to regulatory boards.**

349 Each of the regulatory boards within the Department shall be a separate board. All of the
 350 administrative functions of the regulatory boards shall be under the direction and supervision of the
 351 Director.

352 In the performance and discharge of his duties with respect to the regulatory boards, the Director
 353 shall:

- 354 1. Be the secretary of each board;
- 355 2. Maintain all records for each board;
- 356 3. Collect and account for all fees prescribed to be paid into each board and account for and deposit
 357 the moneys so collected into a special fund from which the expenses of the Board, regulatory boards
 358 and Department shall be paid;

359 4. *Report, at least annually, the fund status of each of the regulatory boards to the members of such*
 360 *boards. Such report shall include (i) a detailed explanation of the actual revenues and expenditures of*
 361 *the board for the previous year in comparison to the projected revenues and expenditures for such year,*
 362 *(ii) the board's current fund balance, and (iii) the revenue and expense projections for the board for the*
 363 *following two biennia;*

364 5. Enforce all statutes and regulations the Director is required to administer;

365 ~~5.~~ 6. Exercise other powers necessary to function as the sole administrative officer of each of such
 366 boards; and

367 ~~6.~~ 7. Perform any additional administrative functions prescribed by the Board.

368 § 54.1-500. Definitions.

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

370 "Accredited asbestos training program" means a training program that has been approved by the
371 Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections,
372 prepare management plans, prepare project designs or act as project monitors.

373 "Accredited lead training program" means a training program that has been approved by the Board to
374 provide training for individuals to engage in lead-based paint activities.

375 "Accredited renovation training program" means a training program that has been approved by the
376 Board to provide training for individuals to engage in renovation or dust clearance sampling.

377 "Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite,
378 and tremolite.

379 "Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase
380 contrast, polarized light, or transmission electron microscopy on material known or suspected to contain
381 asbestos.

382 "Asbestos contractor's license" means an authorization issued by the Board permitting a person to
383 enter into contracts to perform an asbestos abatement project.

384 "Asbestos-containing materials" or "ACM" means any material or product which contains more than
385 1.0 percent asbestos or such other percentage as established by EPA final rule.

386 "Asbestos inspector's license" means an authorization issued by the Board permitting a person to
387 perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure
388 potential asbestos-containing materials.

389 "Asbestos management plan" means a program designed to control or abate any potential risk to
390 human health from asbestos.

391 "Asbestos management planner's license" means an authorization issued by the Board permitting a
392 person to develop or alter an asbestos management plan.

393 "Asbestos project" or "asbestos abatement project" means an activity involving job set-up for
394 containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration
395 of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include
396 nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated
397 or removed do not become friable.

398 "Asbestos project designer's license" means an authorization issued by the Board permitting a person
399 to design an asbestos abatement project.

400 "Asbestos project monitor's license" means an authorization issued by the Board permitting a person
401 to monitor an asbestos project, subject to Department regulations.

402 "Asbestos supervisor" means any person so designated by an asbestos contractor who provides
403 on-site supervision and direction to the workers engaged in asbestos projects.

404 "Asbestos worker's license" means an authorization issued by the Board permitting an individual to
405 work on an asbestos project.

406 "Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

407 "Dust clearance sampling" means an on-site collection of dust or other debris that is present after the
408 completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a
409 report explaining the results.

410 "Dust sampling technician" means an individual licensed by the Board to perform dust clearance
411 sampling.

412 "Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by
413 hand pressure and includes previously nonfriable material after such previously nonfriable material
414 becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by
415 hand pressure.

416 "Home inspection" means any inspection of a residential building for compensation conducted by a
417 licensed home inspector. A home inspection shall include a written evaluation of the readily accessible
418 components of a residential building, including heating, cooling, plumbing, and electrical systems;
419 structural components; foundation; roof; masonry structure; exterior and interior components; and other
420 related residential housing components. A home inspection may be limited in scope as provided in a
421 home inspection contract, provided that such contract is not inconsistent with the provisions of this
422 chapter or the regulations of the Board. For purposes of this chapter, residential building energy analysis
423 alone, as defined in § 54.1-1144, an inspection, investigation, or survey of a dwelling or other structure
424 solely to evaluate, measure, or quantify its energy consumption and efficiency, including lighting, HVAC,
425 electronics, appliances, water heaters, insulation, and water conservation, and to make recommendations
426 to reduce energy consumption and improve efficiency shall not be considered a home inspection.

427 "Home inspector" means a person who meets the criteria of education, experience, and testing
428 required by this chapter and regulations of the Board and who has been licensed by the Board to

429 perform home inspections.

430 "Lead abatement" means any measure or set of measures designed to permanently eliminate
431 lead-based paint hazards, including lead-contaminated dust or soil.

432 "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of
433 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

434 "Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and
435 abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and
436 lead-contaminated soil.

437 "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at
438 or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15
439 U.S.C. § 2683).

440 "Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the
441 Environmental Protection Agency.

442 "Lead contractor" means a person who has met the Board's requirements and has been issued a
443 license by the Board to enter into contracts to perform lead abatements.

444 "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based
445 paint and the provisions of a report explaining the results of the investigation.

446 "Lead inspector" means an individual who has been licensed by the Board to conduct lead
447 inspections and abatement clearance testing.

448 "Lead project design" means any descriptive form written as instructions or drafted as a plan
449 describing the construction or setting up of a lead abatement project area and the work practices to be
450 utilized during the lead abatement project.

451 "Lead project designer" means an individual who has been licensed by the Board to prepare lead
452 project designs.

453 "Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity
454 and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm
455 conducting the risk assessment, explaining the results of the investigation and options for reducing
456 lead-based paint hazards.

457 "Lead risk assessor" means an individual who has been licensed by the Board to conduct lead
458 inspections, lead risk assessments and abatement clearance testing.

459 "Lead supervisor" means an individual who has been licensed by the Board to supervise lead
460 abatements.

461 "Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board
462 to perform lead abatement.

463 "Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association
464 or any other individual or entity.

465 "Principal instructor" means the individual who has the primary responsibility for organizing and
466 teaching an accredited asbestos training program, an accredited lead training program, an accredited
467 renovation training program, or any combination thereof.

468 "Renovation" means the modification of any existing structure or portion thereof, for compensation,
469 that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead
470 abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of
471 contractor in § 54.1-1100. As used in this definition, "compensation" shall include the receipt of (a) pay
472 for work performed, such as that paid to contractors and subcontractors; (b) wages, including but not
473 limited to those paid to employees of contractors, building owners, property management companies,
474 child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and
475 (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or
476 commercial building space.

477 "Renovation contractor" means a person who has met the Board's requirements and has been issued a
478 license by the Board to conduct renovations.

479 "Renovator" means an individual who has been issued a license by the Board to perform renovations
480 or to direct others who perform renovations.

481 "Residential building" means, for the purposes of home inspection, a structure consisting of one to
482 four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

483 "Training manager" means the individual responsible for administering a training program and
484 monitoring the performance of instructors for an accredited asbestos training, accredited lead training
485 program or accredited renovation training program.

486 **2. That Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1 and Chapter**
487 **23.4 (§§ 54.1-2355 through 54.1-2358) of Title 54.1 of the Code of Virginia are repealed.**

488 **3. That the provisions of the first enactment amending § 54.1-113 shall become effective on July 1,**
489 **2022.**