

21102911D

## SENATE BILL NO. 1449

Offered January 19, 2021

A *BILL to amend and reenact §§ 2.2-2901.1, 2.2-3004, 15.2-1500.1, 15.2-1507, as it is currently effective and as it shall become effective, 15.2-1604, 22.1-295.2, 22.1-306, 32.1-127, and 65.2-402.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 1 of Title 32.1 a section numbered 32.1-15.2, by adding in Chapter 2 of Title 37.2 a section numbered 37.2-205, by adding a section numbered 40.1-27.4, and by adding in Article 2 of Chapter 2 of Title 63.2 a section numbered 63.2-221.1, relating to COVID-19 immunization; prohibition on requirement; employment discrimination prohibited.*

Patron—Chase

Referred to Committee on General Laws and Technology

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

1. That §§ 2.2-2901.1, 2.2-3004, 15.2-1500.1, 15.2-1507, as it is currently effective and as it shall become effective, 15.2-1604, 22.1-295.2, 22.1-306, 32.1-127, 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 Article 2 of Chapter 1 of Title 32.1 a section numbered 32.1-15.2, by adding in Chapter 2 of Title 37.2 a section numbered 37.2-205, by adding a section numbered 40.1-27.4, and by adding in Article 2 of Chapter 2 of Title 63.2 a section numbered 63.2-221.1 as follows:

**§ 2.2-2901.1. Employment discrimination prohibited.**

A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

B. No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.**

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules, and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Except as provided in subsection A of § 2.2-3003, decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays

INTRODUCED

SB1449

59 of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The  
60 employee may appeal the denial of a hearing by the agency head to the Director of the Department of  
61 Human Resource Management (the Director). Upon receipt of an appeal, the agency shall transmit the  
62 entire grievance record to the Department of Human Resource Management within five workdays. The  
63 Director shall render a decision on whether the employee is entitled to a hearing upon the grievance  
64 record and other probative evidence.

65 E. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is  
66 employed or in any other locality agreed to by the employee, employer, and hearing officer. The  
67 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of §  
68 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and  
69 be cross-examined.

70 **§ 15.2-1500.1. Employment discrimination prohibited.**

71 A. As used in this section, "age" means being an individual who is at least 40 years of age.

72 B. No department, office, board, commission, agency, or instrumentality of local government shall  
73 discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy,  
74 childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity,  
75 *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

76 C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of  
77 sex or age in those instances when sex or age is a bona fide occupational qualification for employment  
78 or (ii) providing preference in employment to veterans.

79 **§ 15.2-1507. (Effective until July 1, 2021) Provision of grievance procedure; training programs.**

80 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to  
81 certify it as provided in this section, the local governing body shall be deemed to have adopted a  
82 grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2  
83 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The  
84 locality shall provide its employees with copies of the applicable grievance procedure upon request. The  
85 term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or  
86 fringe benefits.

87 Each grievance procedure, and each amendment thereto, in order to comply with this section, shall  
88 be certified in writing to be in compliance by the city, town, or county attorney, and the chief  
89 administrative officer of the locality, and such certification filed with the clerk of the circuit court  
90 having jurisdiction in the locality in which the procedure is to apply. Local government grievance  
91 procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter,  
92 unless certified and filed as provided above within a shorter time period.

93 Each grievance procedure shall include the following components and features:

94 1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to  
95 his employment, including (i) disciplinary actions, including dismissals, disciplinary demotions, and  
96 suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or  
97 unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and  
98 regulations, including the application of policies involving matters referred to in clause (iii) of  
99 subdivision 2; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age,  
100 disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual  
101 orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a  
102 veteran; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure  
103 or because the employee has complied with any law of the United States or of the Commonwealth, has  
104 reported any violation of such law to a governmental authority, has sought any change in law before the  
105 Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or  
106 gross mismanagement. For the purposes of clause (iv), there shall be a rebuttable presumption that  
107 increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of  
108 retaliation.

109 2. Local government responsibilities. Local governments shall retain the exclusive right to manage  
110 the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i)  
111 establishment and revision of wages or salaries, position classification, or general benefits; (ii) work  
112 activity accepted by the employee as a condition of employment or work activity that may reasonably be  
113 expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established  
114 personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee  
115 can show that established promotional policies or procedures were not followed or applied fairly; (v) the  
116 methods, means, and personnel by which work activities are to be carried on; (vi) except where such  
117 action affects an employee who has been reinstated within the previous six months as the result of the  
118 final determination of a grievance, termination, layoff, demotion, or suspension from duties because of  
119 lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment,  
120 and retention of employees within the local government; and (viii) the relief of employees from duties

of the local government in emergencies. In any grievance brought under the exception to clause (vi), the action shall be upheld upon a showing by the local government that (a) there was a valid business reason for the action and (b) the employee was notified of the reason in writing prior to the effective date of the action.

### 3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

- (1) Appointees of elected groups or individuals;
- (2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
- (3) Deputies and executive assistants to the chief administrative officer of a locality;
- (4) Agency heads or chief executive officers of government operations;
- (5) Employees whose terms of employment are limited by law;
- (6) Temporary, limited term, and seasonal employees;
- (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

b. Notwithstanding the exceptions set forth in subdivision a, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board, or authority that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board, or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

### 5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management and a final step providing for a panel hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided that such grant does not exceed or violate the general law or public policy of the Commonwealth.

### 6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time that is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

### 7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel or administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the chief administrative officer, or his designee.

b. The chief administrative officer, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his

182 designee, shall determine compliance issues. Compliance determinations made by the chief  
183 administrative officer shall be subject to judicial review by filing petition with the circuit court within  
184 30 days of the compliance determination.

185 8. Management steps.

186 a. The first step shall provide for an informal, initial processing of employee complaints by the  
187 immediate supervisor through a nonwritten, discussion format.

188 b. Management steps shall provide for a review with higher levels of local government authority  
189 following the employee's reduction to writing of the grievance and the relief requested on forms  
190 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

191 c. With the exception of the final management step, the only persons who may normally be present  
192 in the management step meetings are the grievant, the appropriate local government official at the level  
193 at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be  
194 present only while actually providing testimony. At the final management step, the grievant, at his  
195 option, may have present a representative of his choice. If the grievant is represented by legal counsel,  
196 local government likewise has the option of being represented by counsel.

197 9. Qualification for panel or administrative hearing.

198 a. Decisions regarding grievability and access to the procedure shall be made by the chief  
199 administrative officer of the local government, or his designee, at any time prior to the panel hearing, at  
200 the request of the local government or grievant, within 10 calendar days of the request. No city, town,  
201 or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of  
202 grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative  
203 officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction  
204 in the locality in which the grievant is employed for a hearing on the issue of whether the grievance  
205 qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or  
206 his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative  
207 officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all  
208 other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall  
209 transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief  
210 administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished  
211 to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his  
212 designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the  
213 grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on  
214 or before a certain date.

215 b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear  
216 the appeal on the record transmitted by the chief administrative officer or his designee and such  
217 additional evidence as may be necessary to resolve any controversy as to the correctness of the record.  
218 The court, in its discretion, may receive such other evidence as the ends of justice require. The court  
219 may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the  
220 decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the  
221 conclusion of the hearing. The decision of the court is final and is not appealable.

222 10. Final hearings.

223 a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative  
224 hearing officer, as set forth in the locality's grievance procedure, as described below:

225 (1) If the grievance procedure adopted by the local governing body provides that the final step shall  
226 be an impartial panel hearing, the panel may, with the exception of those local governments covered by  
227 subdivision a (2), consist of one member appointed by the grievant, one member appointed by the  
228 agency head and a third member selected by the first two. In the event that agreement cannot be reached  
229 as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute  
230 arose shall select the third panel member. The panel shall not be composed of any persons having direct  
231 involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to  
232 the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the  
233 same household as the grievant and the following relatives of a participant in the grievance process or a  
234 participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of  
235 a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject  
236 matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as  
237 a panel member.

238 (2) If the grievance procedure adopted by the local governing body provides for the final step to be  
239 an impartial panel hearing, local governments may retain the panel composition method previously  
240 approved by the Department of Human Resource Management and in effect as of the enactment of this  
241 statute. Modifications to the panel composition method shall be permitted with regard to the size of the  
242 panel and the terms of office for panel members, so long as the basic integrity and independence of  
243 panels are maintained. As used in this section, the term "panel" shall include all bodies designated and

authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of Human Resource Management. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules that are promulgated shall include the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels and hearing officers have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

(5) That all evidence be presented in the presence of the panel or hearing officer and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing officer in advance of the hearing;

(7) That the majority decision of the panel or the decision of the hearing officer, acting within the scope of its or his authority, be final, subject to existing policies, procedures and law;

(8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

11. Implementation of final hearing decisions.

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the hearing decision.

B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under the provisions of this section that would result in the reinstatement of any employee of a sheriff's office who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the decision of the panel or hearing officer was consistent with provisions of law and written policy.

**§ 15.2-1507. (Effective July 1, 2021) Provision of grievance procedure; training programs.**

A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to certify it as provided in this section, the local governing body shall be deemed to have adopted a

grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The locality shall provide its employees with copies of the applicable grievance procedure upon request. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Each grievance procedure, and each amendment thereto, in order to comply with this section, shall be certified in writing to be in compliance by the city, town, or county attorney, and the chief administrative officer of the locality, and such certification filed with the clerk of the circuit court having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in clause (iii) of subdivision 2; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification, or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity that may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment, and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi), the action shall be upheld upon a showing by the local government that (a) there was a valid business reason for the action and (b) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

(1) Appointees of elected groups or individuals;

(2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;

(3) Deputies and executive assistants to the chief administrative officer of a locality;

(4) Agency heads or chief executive officers of government operations;

(5) Employees whose terms of employment are limited by law;

(6) Temporary, limited term, and seasonal employees;

(7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance; and

(8) Law-enforcement officers as defined in § 9.1-601 whose grievance is subject to the provisions of § 9.1-601 and relates to a binding disciplinary determination made by a law-enforcement civilian oversight body, except as permitted by subsection F of § 9.1-601.

b. Notwithstanding the exceptions set forth in subdivision a, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of

their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board, or authority that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board, or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided that such grant does not exceed or violate the general law or public policy of the Commonwealth.

6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time that is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel or administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the chief administrative officer, or his designee.

b. The chief administrative officer, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his designee, shall determine compliance issues. Compliance determinations made by the chief administrative officer shall be subject to judicial review by filing petition with the circuit court within 30 days of the compliance determination.

8. Management steps.

a. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

b. Management steps shall provide for a review with higher levels of local government authority following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the local government. Personal face-to-face meetings are required at all of these steps.

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

9. Qualification for panel or administrative hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within 10 calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of

grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.

b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

#### 10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2), consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of Human Resource Management and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of Human Resource Management. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee,



unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules that are promulgated shall include the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels and hearing officers have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

(5) That all evidence be presented in the presence of the panel or hearing officer and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing officer in advance of the hearing;

(7) That the majority decision of the panel or the decision of the hearing officer, acting within the scope of its or his authority, be final, subject to existing policies, procedures and law;

(8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

11. Implementation of final hearing decisions.

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the hearing decision.

B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under the provisions of this section that would result in the reinstatement of any employee of a sheriff's office who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the decision of the panel or hearing officer was consistent with provisions of law and written policy.

**§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices by certain officers; civil penalty.**

A. It shall be an unlawful employment practice for a constitutional officer:

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of appointment or employment, because of such individual's race, color, religion, sex, age, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, national origin, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; or

2. To limit, segregate, or classify his appointees, employees, or applicants for appointment or employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of the individual's race, color, religion, sex, age, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, national origin, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

B. Nothing in this section shall be construed to make it an unlawful employment practice for a constitutional officer to hire or appoint an individual on the basis of his sex or age in those instances where sex or age is a bona fide occupational qualification reasonably necessary to the normal operation of that particular office. The provisions of this section shall not apply to policy-making positions, confidential or personal staff positions, or undercover positions.

C. With regard to notices and advertisements:

1. Every constitutional officer shall, prior to hiring any employee, advertise such employment position in a newspaper having general circulation or a state or local government job placement service in such constitutional officer's locality except where the vacancy is to be used (i) as a placement

opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill positions to be filled by appointees or employees returning from leave with or without pay, (v) to fill temporary positions, temporary employees being those employees hired to work on special projects that have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

2. No constitutional officer shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such constitutional officer indicating any preference, limitation, specification, or discrimination, based on sex or national origin, except that such notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex or age when sex or age is a bona fide occupational qualification for employment.

D. Complaints regarding violations of subsection A may be made to the Division of Human Rights of the Department of Law. The Division shall have the authority to exercise its powers as provided in Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2.

E. Any constitutional officer who willfully violates the provisions of subsection C shall be subject to a civil penalty not to exceed \$2,000.

**§ 22.1-295.2. Employment discrimination prohibited.**

A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

B. No school board or any agent or employee thereof shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 22.1-306. Definitions.**

As used in this article:

"Business day" means any day that the relevant school board office is open.

"Day" means calendar days unless a different meaning is clearly expressed in this article. Whenever the last day for performing an act required by this article falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher during the term of such teacher's contract.

"Grievance" means a complaint or dispute by a teacher relating to his employment, including (i) disciplinary action including dismissal; (ii) the application or interpretation of (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances, and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting, or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, disability, age, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran. Each school board shall have the exclusive right to manage the affairs and operations of the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (1) establishment and revision of wages or salaries, position classifications, or general benefits; (2) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; (3) the establishment or contents of ordinances, statutes, or personnel policies, procedures, rules, and regulations; (4) failure to promote; (5) discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject, or insufficient funding; (6) hiring, transfer, assignment, and retention of teachers within the school division; (7) suspension from duties in emergencies; (8) the methods, means, and personnel by which the school division's operations are to be carried on; or (9) coaching or extracurricular activity sponsorship.

While these management rights are reserved to the school board, failure to apply, where applicable, the rules, regulations, policies, or procedures as written or established by the school board is grievable.

**§ 32.1-15.2. Board not authorized to require COVID-19 vaccinations.**

*Notwithstanding any other provision of law, the Board shall not require any person to receive any COVID-19 vaccination.*

**§ 32.1-127. Regulations.**

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities;

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (a) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (b) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

5. Shall require that each hospital that provides obstetrical services establish a protocol for admission or transfer of any pregnant woman who presents herself while in labor;

6. Shall also require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall require that the discharge plan be discussed with the patient and that appropriate referrals for the mother and the infant be made and documented. Appropriate referrals may include, but need not be limited to, treatment services, comprehensive early intervention services for infants and toddlers with disabilities and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to the extent possible, the other parent of the infant and any members of the patient's extended family who may participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law restrictions, the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager. The community services board shall implement and manage the discharge plan;

7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant for admission the home's or facility's admissions policies, including any preferences given;

8. Shall require that each licensed hospital establish a protocol relating to the rights and responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be consistent with applicable federal law and regulations of the Centers for Medicare and Medicaid Services;

674 9. Shall establish standards and maintain a process for designation of levels or categories of care in  
675 neonatal services according to an applicable national or state-developed evaluation system. Such  
676 standards may be differentiated for various levels or categories of care and may include, but need not be  
677 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

678 10. Shall require that each nursing home and certified nursing facility train all employees who are  
679 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting  
680 procedures and the consequences for failing to make a required report;

681 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or  
682 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication  
683 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute  
684 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable  
685 period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and  
686 regulations or hospital policies and procedures, by the person giving the order, or, when such person is  
687 not available within the period of time specified, co-signed by another physician or other person  
688 authorized to give the order;

689 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer  
690 of the vaccination, that each certified nursing facility and nursing home provide or arrange for the  
691 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal  
692 vaccination, in accordance with the most recent recommendations of the Advisory Committee on  
693 Immunization Practices of the Centers for Disease Control and Prevention;

694 13. Shall require that each nursing home and certified nursing facility register with the Department of  
695 State Police to receive notice of the registration, reregistration, or verification of registration information  
696 of any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant  
697 to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 within the same or a contiguous zip code area in which the  
698 home or facility is located, pursuant to § 9.1-914;

699 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,  
700 whether a potential patient is required to register with the Sex Offender and Crimes Against Minors  
701 Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the home or facility anticipates the  
702 potential patient will have a length of stay greater than three days or in fact stays longer than three  
703 days;

704 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each  
705 adult patient to receive visits from any individual from whom the patient desires to receive visits,  
706 subject to other restrictions contained in the visitation policy including, but not limited to, those related  
707 to the patient's medical condition and the number of visitors permitted in the patient's room  
708 simultaneously;

709 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the  
710 facility's family council, send notices and information about the family council mutually developed by  
711 the family council and the administration of the nursing home or certified nursing facility, and provided  
712 to the facility for such purpose, to the listed responsible party or a contact person of the resident's  
713 choice up to six times per year. Such notices may be included together with a monthly billing statement  
714 or other regular communication. Notices and information shall also be posted in a designated location  
715 within the nursing home or certified nursing facility. No family member of a resident or other resident  
716 representative shall be restricted from participating in meetings in the facility with the families or  
717 resident representatives of other residents in the facility;

718 17. Shall require that each nursing home and certified nursing facility maintain liability insurance  
719 coverage in a minimum amount of \$1 million, and professional liability coverage in an amount at least  
720 equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries  
721 and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such  
722 minimum insurance shall result in revocation of the facility's license;

723 18. Shall require each hospital that provides obstetrical services to establish policies to follow when a  
724 stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and  
725 their families and other aspects of managing stillbirths as may be specified by the Board in its  
726 regulations;

727 19. Shall require each nursing home to provide a full refund of any unexpended patient funds on  
728 deposit with the facility following the discharge or death of a patient, other than entrance-related fees  
729 paid to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for  
730 such funds by the discharged patient or, in the case of the death of a patient, the person administering  
731 the person's estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

732 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol  
733 that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct  
734 verbal communication between the on-call physician in the psychiatric unit and the referring physician,  
735 if requested by such referring physician, and prohibits on-call physicians or other hospital staff from

refusing a request for such direct verbal communication by a referring physician and (ii) a patient for whom there is a question regarding the medical stability or medical appropriateness of admission for inpatient psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal communication, either in person or via telephone, with a clinical toxicologist or other person who is a Certified Specialist in Poison Information employed by a poison control center that is accredited by the American Association of Poison Control Centers to review the results of the toxicology screen and determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists, if requested by the referring physician;

21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall develop a policy governing determination of the medical and ethical appropriateness of proposed medical care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision reached by the interdisciplinary medical review committee, which shall be included in the patient's medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to represent the patient or from seeking other remedies available at law, including seeking court review, provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days of the date on which the physician's determination that proposed medical treatment is medically or ethically inappropriate is documented in the patient's medical record;

22. Shall require every hospital with an emergency department to establish protocols to ensure that security personnel of the emergency department, if any, receive training appropriate to the populations served by the emergency department, which may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis;

23. Shall require that each hospital establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan;

24. Shall establish an exemption, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds in an existing hospital or nursing home when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds;

25. Shall establish protocols to ensure that any patient scheduled to receive an elective surgical procedure for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up treatment after discharge is informed that he (i) is expected to require outpatient physical therapy as a follow-up treatment and (ii) will be required to select a physical therapy provider prior to being discharged from the hospital;

26. Shall permit nursing home staff members who are authorized to possess, distribute, or administer medications to residents to store, dispense, or administer cannabis oil to a resident who has been issued a valid written certification for the use of cannabis oil in accordance with subsection B of § 54.1-3408.3 and has registered with the Board of Pharmacy;

27. Shall require each hospital with an emergency department to establish a protocol for treatment of individuals experiencing a substance use-related emergency to include the completion of appropriate assessments or screenings to identify medical interventions necessary for the treatment of the individual in the emergency department. The protocol may also include a process for patients that are discharged directly from the emergency department for the recommendation of follow-up care following discharge for any identified substance use disorder, depression, or mental health disorder, as appropriate, which

797 may include instructions for distribution of naloxone, referrals to peer recovery specialists and  
798 community-based providers of behavioral health services, or referrals for pharmacotherapy for treatment  
799 of drug or alcohol dependence or mental health diagnoses; ~~and~~

800 28. During a public health emergency related to COVID-19, shall require each nursing home and  
801 certified nursing facility to establish a protocol to allow each patient to receive visits, consistent with  
802 guidance from the Centers for Disease Control and Prevention and as directed by the Centers for  
803 Medicare and Medicaid Services and the Board. Such protocol shall include provisions describing (i) the  
804 conditions, including conditions related to the presence of COVID-19 in the nursing home, certified  
805 nursing facility, and community, under which in-person visits will be allowed and under which in-person  
806 visits will not be allowed and visits will be required to be virtual; (ii) the requirements with which  
807 in-person visitors will be required to comply to protect the health and safety of the patients and staff of  
808 the nursing home or certified nursing facility; (iii) the types of technology, including interactive audio or  
809 video technology, and the staff support necessary to ensure visits are provided as required by this  
810 subdivision; and (iv) the steps the nursing home or certified nursing facility will take in the event of a  
811 technology failure, service interruption, or documented emergency that prevents visits from occurring as  
812 required by this subdivision. Such protocol shall also include (a) a statement of the frequency with  
813 which visits, including virtual and in-person, where appropriate, will be allowed, which shall be at least  
814 once every 10 calendar days for each patient; (b) a provision authorizing a patient or the patient's  
815 personal representative to waive or limit visitation, provided that such waiver or limitation is included in  
816 the patient's health record; and (c) a requirement that each nursing home and certified nursing facility  
817 publish on its website or communicate to each patient or the patient's authorized representative, in  
818 writing or via electronic means, the nursing home's or certified nursing facility's plan for providing visits  
819 to patients as required by this subdivision; *and*

820 29. *Shall prohibit a hospital, nursing home, or certified nursing facility from requiring any employee*  
821 *of the hospital, nursing home, or certified nursing facility to receive any immunization against*  
822 *COVID-19.*

823 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and  
824 certified nursing facilities may operate adult day care centers.

825 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for  
826 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot  
827 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to  
828 be contaminated with an infectious agent, those hemophiliacs who have received units of this  
829 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot  
830 that is known to be contaminated shall notify the recipient's attending physician and request that he  
831 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,  
832 return receipt requested, each recipient who received treatment from a known contaminated lot at the  
833 individual's last known address.

834 **§ 37.2-205. Board not authorized to require vaccinations.**

835 *Notwithstanding any other provision of law, the Board shall not require any person to be immunized*  
836 *against COVID-19.*

837 **§ 40.1-27.4. Requiring COVID-19 immunizations prohibited; discrimination prohibited.**

838 *Notwithstanding any other provision of law, no employer shall (i) require any employee to receive*  
839 *any immunization against COVID-19 or (ii) discharge, discipline, or discriminate against an employee*  
840 *because the employee has not received any immunization against COVID-19.*

841 **§ 63.2-221.1. Board not authorized to require vaccinations.**

842 *Notwithstanding any other provision of law, the Board shall not require any person to be immunized*  
843 *against COVID-19.*

844 **§ 65.2-402.1. Presumption as to death or disability from infectious disease.**

845 A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health  
846 condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter,  
847 or salaried or volunteer emergency medical services personnel, (ii) member of the State Police Officers'  
848 Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy  
849 sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or  
850 deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation  
851 police officer who is a full-time sworn member of the enforcement division of the Department of  
852 Wildlife Resources, (ix) Capitol Police officer, (x) special agent of the Virginia Alcoholic Beverage  
853 Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for  
854 such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the  
855 provisions of this chapter as provided in § 65.2-305, officer of the police force established and  
856 maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force  
857 established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the  
858 Department of Conservation and Recreation commissioned pursuant to § 10.1-115, (xiv) sworn officer of

the police force established and maintained by the Virginia Port Authority, (xv) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 and employed by any public institution of higher education, (xvi) correctional officer as defined in § 53.1-1, or (xvii) full-time sworn member of the enforcement division of the Department of Motor Vehicles who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer. For any correctional officer as defined in § 53.1-1 or full-time sworn member of the enforcement division of the Department of Motor Vehicles, the presumption shall not apply if such individual was diagnosed with hepatitis, meningococcal meningitis, or HIV before July 1, 2020.

B. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the 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 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. E. 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.