

REVISION OF TITLE 59 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION**

to

THE GOVERNOR

and

THE GENERAL ASSEMBLY OF VIRGINIA



HD3, 1968

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
1967

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REVISION OF TITLE 59 OF THE CODE OF VIRGINIA

REPORT OF THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, June 12, 1967

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1966 directed the Virginia Code Commission, by Chapter 315 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 59, relating to trade and commerce.

Extracts from Chapter 315 follow:

“§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

“§ 2. The Commission shall undertake the revision of Titles 59, 60, 61, 62, 63, 64 and 65 and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-seven, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect.”

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar, was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail and consulted interested officials and agencies of the State government. The Code Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials and agencies.

As a result of its efforts, the Commission considered it desirable that there be a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 59 and the enactment of Title 59.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 59. Also, following each section of the draft of Title 59.1 are Counsel's notes identifying the source of the provisions of the section and

commenting upon any changes therein. Furthermore, preceding the draft of Title 59.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 59 into proposed Title 59.1. This table also indicates those sections of Title 59 which have been deleted. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 59.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bill in 1968.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this revision, and for the cooperation of interested officials and agencies of the State government.

Respectfully submitted,

JAMES M. THOMSON, *Chairman*
E. ALMER AMES, JR., *Vice-Chairman*
FRED W. BATEMAN
JOHN WINGO KNOWLES
G. M. LAPSLEY
A. L. PHILPOTT

Kenneth C. Patty, formerly a member of the Virginia Code Commission, died on March 27, 1967.

April 12, 1967

The Honorable James M. Thomson, Chairman
The Honorable E. Almer Ames, Jr.
The Honorable Fred W. Bateman
The Honorable Robert Y. Button
The Honorable John Wingo Knowles
The Honorable G. McIver Lapsley
The Honorable A. L. Philpott

Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Complying with the provisions of Chapter 315 of the Acts of Assembly of 1966 approved March 31, 1966, and your instructions, I have prepared and herewith transmit to you a proposed draft of revision of Title 59 of the Code of Virginia.

This draft has been prepared in keeping with your desires insofar as I have been able to determine them from the several conferences held by the Commission for the purpose.

This draft has been prepared in the usual form, i.e., a bill suitable for introduction at the 1968 Session of the General Assembly, together with a table of contents and a table of comparable sections.

The bill is designed to repeal present Title 59 and to provide in substitution therefor a new Title 59.1.

Although many changes are suggested in the bill which accompanies this report, perhaps the most significant one is in § 59-21 (§ 59.1-23), which is the key section of Chapter 3, relating to "Trusts, Combinations and Monopolies." Before amendment, this section reads: "any trust or monopoly, as defined in the preceding section, is unlawful, against public policy and void." This provision on two separate occasions has been responsible for decisions by the Supreme Court of Appeals that Chapter 3 and Chapter 1, the "Fair Trade Act," are incompatible. In an attempt to reconcile the differences between the two chapters the following language has been added to § 59-21 (§ 59.1-23): "but, for the purposes of this chapter, no "trust" or "monopoly" shall be deemed to exist solely by virtue of those acts, or any of them, authorized by Chapter 1 of this title." In the revision of this section, consideration was given to Section 165 of the Constitution of Virginia, which requires the statutory regulation of trusts, combinations and monopolies.

§ 59-48 (§59.1-156) is amended to shift the rule making power from the Commissioner of Agriculture and Commerce to the Board of Agriculture and Commerce to conform with practice.

§§ 59-141 through 59-144, which authorize the governing bodies of counties to tax and regulate the sale of pistols and revolvers, are transferred to Title 15.1, "Counties, Cities and Towns" as §§ 15.1-523 through 15.1-525 for better context.

Similarly, §§ 18.1-129 through 18.1-146.1 are transferred from Title 18.1 to Title 59.1 and are redesignated §§ 59.1-42 through 59.1-68 for better context. These sections all relate to misrepresentations and other

offenses connected with sales. As so transferred, the sections would constitute Chapter 4 of Title 59.1.

§§ 59-31 (§ 59.1-32) and 59-34 (§ 59.1-35) have been amended by substituting "county or municipal court" for "trial justice" to conform with the provisions of Title 16.1, relating to courts not of record.

In thirteen sections the language "Agriculture and Commerce" has been substituted for "Agriculture and Immigration" to conform with the changes in Sections 143, 145 and 146 of the Virginia Constitution, which became effective November 8, 1966.

Minor technical changes, primarily in internal section references, appear in numerous other sections.

Although the diversity of the subject matter found in the various chapters of this Title does not encourage ideal groupings, an attempt has been made to improve the sequence of materials. Only the first three chapters will be found with their old numerical designations.

Counsel recommends the accompanying draft of Title 59.1 as a substantial improvement over present Title 59 and suggests its submission to the Governor and the General Assembly for introduction at the 1968 Session.

Respectfully,

HUGH R. THOMPSON, JR.

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A Bill to revise, rearrange, amend and recodify the general laws of Virginia relating to trade and commerce; to that end to repeal Title 59 of the Code of Virginia, which title includes Chapters 1 to 17 and §§ 59-1 to 59-235, inclusive, of the Code of Virginia, as amended, which title relates to trade and commerce; to amend the Code of Virginia by adding thereto in lieu of the foregoing title, chapters and sections of the Code repealed by this act a new title numbered 59.1, which title includes new chapters numbered 1 to 16, both inclusive, and new sections numbered 59.1-1 to 59.1-195, both inclusive, relating to trade and commerce generally; to repeal §§ 18.1-129 through 18.1-146.1 of the Code of Virginia; to amend the Code of Virginia by adding in Title 15.1 thereof sections numbered 15.1-523, 15.1-524 and 15.1-525; and to prescribe when such revision and recodification shall become effective.

Be it enacted by the General Assembly of Virginia:

1. That Title 59 of the Code of Virginia, which title includes chapters 1 to 17 and §§ 59-1 to 59-235, inclusive, of the Code of Virginia, as amended, is repealed.
2. That §§ 18.1-129 through 18.1-146.1 of the Code of Virginia are repealed.
3. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 59.1, new chapters numbered 1 to 16, inclusive, and new sections numbered 59.1-1 to 59.1-195, inclusive, which new title, chapters and sections are as follows:

TITLE 59.1

TRADE AND COMMERCE

CHAPTER 1.

FAIR TRADE ACT.

§ 59.1-1. Title of Chapter.—This chapter may be known and cited as the “Fair Trade Act”.

Source: § 59-8.1.

Note: No change, but see note to § 59.1-40.

§ 59.1-2. Definitions; notice of and assent to terms of contract.—The following terms, as used in this chapter, are hereby defined as follows:

(1) “*Commodity*” means any subject of commerce, except meat and meat products, meal, flour, bakery products, fresh and canned fish, sea food, fresh and canned fruits and vegetables, coffee, tea, ice, sugar and wearing apparel.

(2) “*Wearing apparel*” means the finished product or article and does not include any material, ingredient, or component out of which wearing apparel is made, altered or repaired.

(3) “*Producer*” means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(4) “*Distributor*” means any person who identifies a commodity distributed by him by the use of his trade-mark or trade name.

(5) “*Wholesaler*” means any person who buys a commodity for the purpose of resale.

(6) “*Retailer*” means any person selling a commodity to a consumer for use.

(7) “*Trade-mark*” means any word, name, symbol or device, or any combination thereof used by a producer or distributor to identify his commodity and distinguish it from that produced or distributed by others.

(8) “*Trade name*” means personal names, and any word, words, symbol or symbols used by producers or distributors to identify their companies, firms or corporations.

(9) “*Person*” means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust or any unincorporated organization.

(10) “*Contract*” means any agreement, written or verbal, or actual notice imparted by mail or attached to the commodity or containers thereof.

The acceptance of a commodity for resale, after notice imparted by mail or attached to the commodity or containers thereof, shall be prima facie evidence of actual notice of the terms of the “contract”. Acceptance for resale with actual notice shall be deemed to be assent to the terms of the “contract”.

Source: § 59-8.2.

Note: No change.

§ 59.1-3. Provisions not rendering contracts invalid; required provisions.—No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark or trade name of the producer or distributor of such commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others shall be deemed in violation of any law of the State by reason of any of the following provisions which may be contained in such contract:

(a) That the buyer will not resell such commodity at less than the minimum price stipulated by the seller;

(b) That the buyer will require of any dealer to whom he may resell such commodity a contract that he will not, in turn, resell at less than the minimum price stipulated by the seller;

(c) That the seller will not sell such commodity:

(1) To any wholesaler, unless such wholesaler will agree not to resell the same to any retailer unless the retailer will in turn agree not to resell the same except to consumers for use and at not less than the stipulated minimum price, and such wholesaler will likewise agree not to resell the same to any other wholesaler unless such other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(2) To any retailer, unless the retailer will agree not to resell the same except to consumers for use and at not less than the stipulated minimum price.

Source: § 59-8.3.

Note: No change.

§ 59.1-4. Violation of resale price restrictions.—For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract, except to the extent authorized by the contract, the following instances shall be deemed a violation of such resale price restriction, for which the remedies prescribed by § 59.1-7 shall be available:

(a) The offering or giving of any article of value in connection with the sale of such commodity;

(b) The offering or the making of any concession of any kind whatsoever, whether by the giving of coupons or otherwise, in connection with any such sale; or

(c) The sale or offering for sale of such commodity in combination with any other commodity.

Nothing contained in this section shall be construed as prohibiting the giving of “premium stamps,” the furnishing, supplying or use of which may be taxed under article 10.1 (§ 58-354.1 et seq.), chapter 7, Title 58, of the Code of Virginia, as amended.

Source: § 59-8.4.

Note: Internal section reference has been conformed.

§ 59.1-5. Who may establish minimum resale price.—No minimum resale price shall be established for any commodity by any person other than the owner of the trade-mark or trade name used in connection with such commodity or a wholesaler specifically authorized to establish such price by the owner of such trade-mark or trade name.

Source: § 59-8.5.

Note: No change.

§ 59.1-6. Resales not precluded.—No contract containing any of the provisions enumerated in § 59.1-3 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(a) In closing out the owner’s stock for the bona fide purpose of discontinuing dealing in such commodity and plain notice of the fact is given to the public; provided the owner of such stock shall give to the producer, distributor, or wholesaler, as the case may be, of such commodity prompt and reasonable notice in writing of his intention to close out such stock, and an opportunity to purchase such stock at the original invoice price;

(b) When the goods are altered, second-hand, damaged, defaced or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof, such notice to be conspicuously displayed in all advertisements and to be affixed to the commodity;

(c) By any officer acting under an order of court.

Source: § 59-8.6.

Note: Internal section reference has been conformed.

§ 59.1-7. Actionable unfair competition.—Willfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract is unfair competition and is actionable at the suit of any person damaged thereby.

Source: § 59-8.7.

Note: No change.

§ 59.1-8. **Contracts exempted.**—This chapter shall not apply to any contract, agreement, or understanding between or among producers or distributors or, except as provided in subsection (b) (1) of § 59.1-3, between or among wholesalers, or between or among retailers, as to sale or resale prices. Nor shall this chapter apply to any sale of a commodity to the Commonwealth of Virginia, or an agency thereof, a political subdivision, a county, city or town, or a religious, charitable or educational institution.

Source: § 59-8.8.

Note: Internal section reference has been conformed.

§ 59.1-9. **Purposes of chapter.**—This chapter is enacted in the exercise of the police powers of the Commonwealth, and its purposes are generally to protect and preserve small business, to safeguard the goodwill of trade-marks and trade names, to further wholesome competition, to prevent monopoly, and to promote the public welfare by securing wider distribution of commodities and an increase in the production thereof, and thereby reducing production and distribution costs, protecting and increasing gainful employment in manufacturing, wholesaling and retailing, all for the benefit of the consumer and the well-being of the citizens of the Commonwealth.

Source: § 59-8.9.

Note: No change.

CHAPTER 2.

UNFAIR SALES ACT.

§ 59.1-10. **Title of chapter.**—This chapter shall be known and designated, and may be cited as the “Unfair Sales Act”.

Source: § 59-9.

Note: No change.

§ 59.1-11. **Definitions.**—When used in this chapter, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) “*Merchandise*” shall mean any tangible personal property the subject of commerce.

(2) “*Cost to the retailer*” shall mean the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer within thirty days prior to the date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added (a) freight charges not otherwise included in the cost of the merchandise, (b) cartage to retail outlet if done or paid for by the retailer, which cartage cost shall be deemed to be no more than the lowest published common carrier rate available for such merchandise and in the absence of such published rate such cartage cost shall be deemed to be not less than three-fourths of one per centum of the cost of the merchandise to the retailer as herein defined, unless the retailer claims and proves a lower cartage cost, and (c) a mark-up to cover in part the cost of doing business, which mark-up in the absence of proof of a lesser cost, shall be not less than six per centum of the total cost at retail outlet.

(3) “*Cost to the wholesaler*” shall mean the invoice cost of the merchandise to the wholesaler or the replacement cost of the merchandise to the wholesaler within thirty days prior to date of sale, in the quantity last purchased, whichever is lower; less all trade discounts except custo-

mary discounts for cash; to which shall be added (a) State and local sales taxes paid by the wholesaler with respect to such merchandise, (b) freight charges not otherwise included in the cost of the merchandise, (c) cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost shall be deemed to be no more than the lowest published common carrier rate available for such merchandise and in the absence of such published rate such cartage cost shall be deemed to be not less than three-fourths of one per centum of the cost of the merchandise to the wholesaler as herein defined, unless said wholesaler claims and proves a lower cartage cost, and (d) a mark-up to cover in part the cost of doing business, which mark-up, in the absence of proof of a lower cost, shall be not less than two per centum of the total cost of the merchandise at wholesale warehouse or outlet.

(4) “*Cost to the retailer*” and “*cost to the wholesaler*” as defined in subsections (2) and (3) shall mean bona fide costs.

(5) “*Sell at retail*”, “*sales at retail*” and “*retail sale*” shall mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller’s business of title to merchandise to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of such purchase price.

(6) “*Sell at wholesale*”, “*sales at wholesale*” and “*wholesale sales*” shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual prosecution of the seller’s business, of title to merchandise to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any such transfer of property where title is retained by the seller as security for the payment of the purchase price.

(7) “*Retailer*” shall mean and include every person, partnership, corporation or association engaged in the business of making sales at retail within the State; provided that, in the case of a person, partnership, corporation or association engaged in the business of making sales both at retail and at wholesale such term shall be applied only to the retail portion of such business.

(8) “*Wholesaler*” shall mean and include every person, partnership, corporation or association engaged in the business of making sales at wholesale within the State; provided that, in the case of a person, partnership, corporation or association engaged in the business of making sales both at wholesale and at retail, such terms shall be applied only to the wholesale portion of such business.

Source: § 59-10.

Note: No change

§ 59.1-12. **Items advertised or sold at combined price.**—When two or more items are advertised, offered for sale or sold at a combined price, the price of each such item named shall be governed by the provisions of subsections (2) and (3) of the preceding section, respectively.

Source: § 59-11.

Note: No change.

§ 59.1-13. **“Sales at retail” and “sales at wholesale” by same person.**—In each case where both of the functions, “sales at retail” and “sales at wholesale”, are performed by the same firm or person, or where the retailer

buys a portion of his supplies direct from the manufacturer or producer or any other source, thereby acting as his own wholesaler, then both the retail and wholesale minimum mark-ups plus all transportation costs, as defined in § 59.1-11 of the Code of 1950 as now or hereafter amended, shall apply to sales at retail.

Source: § 59-12.

Note: Internal section reference has been conformed.

§ 59.1-14. Unfair method of competition; evidence of violation.—It is hereby declared that advertisement, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this chapter, with the intent of diverting trade from a competitor, or with the intent of deceiving any purchaser or prospective purchaser, substantially lessening competition, unreasonably restraining trade, or tending to create a monopoly in any line of commerce, is an unfair method of competition, contrary to public policy, and in contravention of the policy of this chapter.

In any action brought pursuant to this chapter, whether civil or criminal, proof of advertisement, offering to sell or sale of any merchandise at less than cost as defined in this chapter shall be prima facie evidence of intent to divert trade from a competitor, to substantially lessen competition, and to unreasonably restrain trade.

Source: § 59-13.

Note: No change.

§ 59.1-15. Violation a misdemeanor.—Any retailer who shall, in contravention of the policy of this chapter, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer as defined in this chapter; or any wholesaler who shall, in contravention of the policy of this chapter, advertise, offer to sell, or sell at wholesale any item of merchandise at less than cost to the wholesaler as defined in this chapter, shall be guilty of a misdemeanor.

Source: § 59-14.

Note: No change.

§ 59.1-16. Injunctive relief.—In addition to the penalties provided in this chapter, the courts of record of this State are hereby invested with jurisdiction to prevent and restrain violations or threatened violations of this chapter. Any person shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any threatened loss or injury by reason of a violation of this chapter without being compelled to allege or prove that an adequate remedy at law does not exist. If in such action a violation or threatened violation of this chapter shall be established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of such proceeding.

In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in such action, in addition to such injunctive relief and costs of such suit shall be entitled to recover from the defendant the actual damages sustained by him.

Source: § 59-15.

Note: No change.

§ 59.1-17. Attorney General may investigate complaint of violation.—Upon complaint of any violation of this chapter made to the

Attorney General by any individual wholesaler or retailer or by any association of wholesalers or retailers, incorporated under the laws of the State and recognized by him as fairly representative of the wholesale and retail merchants of the State interested in such complaint, he may investigate such complaint or cause such complaint to be investigated, provided the expense and cost of such investigation are borne by the complainant.

Source: § 59-16.

Note: No change.

§ 59.1-18. Report of investigation to Commonwealth's attorney; proceedings against violator.—If it appears from such investigation that any provision of this chapter has been violated, the Attorney General may report the result of the investigation to the attorney for the Commonwealth of the proper county or corporation, who may institute and conduct in the appropriate court such proceedings against the violator as such attorney for the Commonwealth may deem proper. The Attorney General may institute and conduct or cause to be instituted and conducted a suit in the name of the Commonwealth to prevent and restrain violations of this chapter, provided that all costs and expenses of any such proceedings, not properly taxable against the violator, shall be borne by the complainant at whose instance any such proceedings may be instituted.

Source: § 59-17.

Note: No change.

§ 59.1-19. Publication and circulation of provisions of chapter.—The Attorney General in his discretion may also, at the instance of any such association of wholesalers or retailers, and with the view to avoid or reduce violations of this chapter and these sections, cause to be published and circulated in such manner and to such extent as he may deem proper, the provisions of this chapter and his interpretation and construction thereof, provided the cost thereof is paid by the association requesting such publication and circulation.

Source: § 59-18.

Note: No change.

§ 59.1-20. Exemptions from chapter.—The provisions of this chapter shall not apply to sales at retail or sales at wholesale:

(1) Where merchandise is sold at bona fide clearance sales, if advertised, marked and sold as such;

(2) Where the merchandise is fresh fruits or fresh vegetables or farm products when the sales are made by the producers thereof, or where perishable merchandise must be sold promptly in order to prevent loss;

(3) Where merchandise is imperfect or damaged, or is being discontinued and is advertised, marked and sold as such;

(4) Where merchandise is sold upon the final liquidation of any business;

(5) Where merchandise is sold for charitable purposes or to relief agencies;

(6) Where merchandise is sold on contract to departments of governments or governmental institutions;

(7) Where the price of merchandise is made in good faith to meet lawful competition;

(8) Where sales are made by one wholesaler to another wholesaler or by one retailer to another retailer for the purposes of accommodation;

(9) Where merchandise is sold by any officer acting under the order or direction of any court or by any fiduciary, or by any trustee in a deed of trust or deed of assignment for the benefit of creditors.

Nothing in this chapter shall be construed to apply to fertilizer companies or their agents or persons or companies buying goods from fertilizer companies for the purpose of selling at retail.

Source: § 59-19.

Note: No change.

§ 59.1-21. Revocation or suspension of licenses or permits for violations in sale of cigarettes or groceries.—The State Tax Commissioner may, upon notice and after hearing, suspend or revoke the licenses of any wholesaler of tobacco or groceries or peddler of tobacco, or suspend any permit issued under § 58-757.10 during the time of violation, for any violation of this chapter in respect to the sale of cigarettes or groceries.

Any person aggrieved by such decision, order or finding of the State Tax Commissioner may appeal therefrom to the circuit or corporation court of the county or city in which he resides or has his principal place of business or to the Circuit Court of the city of Richmond, if such person is a nonresident or does not have a principal place of business in this State.

Source: § 59-19.1.

Note: No change.

CHAPTER 3.

TRUSTS, COMBINATIONS AND MONOPOLIES.

§ 59.1-22. Definitions.—The word “*person*” or “*persons*”, as used in this chapter, includes corporations, partnerships and associations existing under or authorized by any state or territory of the United States or a foreign country.

A “*trust*” or “*monopoly*” is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, for any or all of the following purposes:

- (1) To create or carry out restrictions in trade or business;
- (2) To limit, restrict or reduce the production of any natural resource, merchandise or commodities;
- (3) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or commodities;
- (4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, any article, thing or commodity of merchandise, produce, business or commerce intended for sale, barter, use, enjoyment or consumption in this State;
- (5) To make, enter into, execute or carry out contracts, obligations or agreements of any kind or description by which they: (a) bind or have bound themselves not to sell, dispose of or transport any article or commodity, or an article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value; (b) agree in any manner to keep the price of such article, commodity or transportation at a fixed or

graduated figure; (c) in any manner establish or settle the price of an article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, purchasers or consumers in the sale or transportation of such article or commodity; or (d) agree to pool, combine or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity that its price might in any manner be affected. Nothing herein contained shall be held or construed to abridge the right to strike.

Source: § 59-20.

Note: No change.

§ 59.1-23. Trusts and monopolies unlawful.—Any trust or monopoly, as defined in the preceding section, is unlawful, against public policy and void; but, for the purposes of this chapter, no “trust” or “monopoly” shall be deemed to exist solely by virtue of those acts, or any of them, authorized by Chapter 1 of this Title.

Source: § 59-21.

Note: The wording which follows the semicolon is added. The new language is intended to resolve the heretofore fatal conflict between Chapters 1 and 3, which problem was aggravated by the requirement of § 165 of the Virginia Constitution. See *Standard Drug Co., Inc., v. General Electric Co.*, 202 Va. 367, 117 S.E. (2d) 289 and *Benrus Watch Co. v. Kirsch*, 198 Va. 94, 92 S.E. (2d) 384; also 45 Va. L. Rev. 166, 18 W. & L. L. Rev. 176 and 47 Va. L. Rev. 626.

§ 59.1-24. Issue of trust certificates; combination to limit or fix prices or lessen production or sale.—No person, partnership, association or corporation, or any agent, shall issue or own trust certificates, and no such person, partnership, association or corporation, or any agent, officer or employee thereof, or any director or stockholder of a corporation, shall enter into a combination, contract or agreement with any person or corporation, or a stockholder or director thereof, the purpose and effect of which is to place the management or control of such combination or combinations or the manufactured product thereof, in the hands of a trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of an article of commerce, use, enjoyment or consumption, or to prevent, restrict or diminish the manufacture or output of such article. A contract or agreement in violation of any provision of this chapter is void and not enforceable either at law or in equity.

Source: § 59-22.

Note: No change.

§ 59.1-25. Foreign corporation violating chapter.—A foreign corporation or foreign association exercising any of the powers, franchises or functions of a corporation in this State violating any provision of this chapter shall not have the right of, and shall be prohibited from, doing any business in this State.

Source: § 59-23.

Note: No change.

§ 59.1-26. Agreements in leases or sales which may substantially lessen competition unlawful.—No person engaged in business within this State, in the course of such business, shall lease or make sale, or contract for sale, of goods, wares, merchandise, machinery, supplies or other commodities for use, consumption or resale within this State, or fix the price

therefor, or discount from or rebate upon such prices on the agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, when the effect of such lease, sale or contract for sale of such goods, wares, merchandise, machinery, supplies or other commodities may be to substantially lessen competition or to create a monopoly in any line of business.

Source: § 59-24.

Note: No change.

§ 59.1-27. Discrimination permitted.—Nothing contained in this chapter shall apply to discrimination in prices:

(1) Between purchasers of commodities, (a) on account of differences in grade, quality or quantity of the commodity sold, provided in the cases of differences on account of quantity such differences shall be reasonable, or (b) only to make allowance for differences in the cost of transportation, or

(2) In the sale of different commodities made in good faith to meet competition.

Nor shall anything in this chapter prevent persons selling goods as merchandise from selecting their own customers in bona fide transactions and not in restraint of trade.

Source: § 59-25.

Note: No change.

§ 59.1-28. Damages recoverable by person injured; limitation upon compensation of counsel.—Any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel. Such counsel shall in no case receive any other, further or additional compensation except that allowed by the court and any contract to the contrary shall be null and void.

Source: § 59-26.

Note: No change.

§ 59.1-29. Judgment or decree against defendant in prosecution, etc., evidence in suit by injured party.—A final judgment or decree rendered in any criminal prosecution or proceeding in equity brought in behalf of the Commonwealth under this chapter to the effect that the defendant has violated the provisions of this chapter shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under this chapter, as to the matters respecting which such judgment or decree would be an estoppel as between the parties thereto.

This section shall not apply to judgments or decrees entered before any testimony has been taken or to judgments or decrees rendered by consent in criminal proceedings.

Source: § 59-27.

Note: No change.

§ 59.1-30. Suspension of running of statute of limitations.—Whenever any suit or proceeding in equity or criminal prosecution is instituted by the Commonwealth to prevent, restrain or punish any of the violations

of this chapter, the running of the statute of limitations in respect of any suit or action arising under this chapter and based in whole or in part on any matter complained of in such suit or proceeding shall be suspended during the pendency thereof.

Source: § 59-28.

Note: No change.

§ 59.1-31. Penalties for violation of chapter.—Any person or firm, or any officer or director of any corporation, violating or conspiring to violate any of the provisions of this chapter shall be fined not exceeding one thousand dollars, or confined in jail not exceeding twelve months, or both. On the second or subsequent conviction the offense may, in the discretion of the jury, be punished by a fine of not less than one thousand nor more than five thousand dollars and by confinement in jail not less than six months and not exceeding twelve months, or by confinement in the penitentiary not less than one nor more than ten years.

Source: § 59-29.

Note: No change.

§ 59.1-32. Duty of attorney for Commonwealth.—Whenever the attorney for the Commonwealth of any city or county in this State shall have reason to believe that the provisions of this chapter have been or are being violated, he shall cause a warrant or warrants to be issued by a justice of the peace or the clerk of the county or municipal court, returnable to the circuit court of his county or corporation court of his city, after which the offender shall be proceeded against by indictment or in lieu thereof, indictments may be preferred against such offender in the first instance, with the usual right to bail.

Source: § 59-31.

Note: The words "county or municipal court" are substituted for "trial justice of his county or city."

§ 59.1-33. Suit by citizens to restrain violations.—Whenever ten or more citizens of any county or city shall file a bill in chancery in the circuit court of any county or the corporation court of any city against any person, firm or corporation, alleging violations of the provisions of this chapter and praying that such party defendant may be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' or defendants' counsel.

Source: § 59-32.

Note: No change.

§ 59.1-34. When Attorney General required to file bill for injunction.—Whenever affidavits of fifty or more citizens of the Commonwealth shall be submitted to the Attorney General alleging a violation or violations of the provisions of this chapter upon the part of citizens of two or more counties, or of a city and one or more counties, or whenever the Governor shall request such action, it shall be the duty of the Attorney General to file a bill for an injunction against the alleged violators thereof in the circuit court of the city of Richmond, which shall have jurisdiction to summon the defendants and try the issues involved as though such defendants were citizens of the city of Richmond, and may issue injunctions pendente lite or

permanent injunctions for the purpose of enforcing the provisions of this chapter.

Source: § 59-33.

Note: No change.

§ 59.1-35. Jurisdiction of grand juries; courts in which trials held; mode of trial.—The grand juries of the several cities and counties shall have jurisdiction to indict violators of the provisions of this chapter, who shall be tried in the circuit courts of the counties and the corporation courts of the cities as in the case of appeals from courts not of record and in the case of second or subsequent offenses the cases shall be tried as other felonies are tried in such courts.

Source: § 59-34.

Note: The words “courts not of record” are substituted for the words “trial justices.”

§ 59.1-36. Sufficiency of indictment, information or complaint.—In any indictment, information or complaint for any offense named in this chapter, it shall be sufficient to state the purpose or effect of the trust, combination or monopoly and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

Source: § 59-35.

Note: No change.

§ 59.1-37. Sufficiency of proof; admissibility of evidence of general reputation as to existence of trust.—In prosecutions under this chapter, it shall be sufficient to prove that a trust, combination or monopoly, as defined herein, exists, and that the defendant belonged to it, and acted for or in connection with it, without proving that all the members belonged to it or without proving or producing any article of agreement, or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. Evidence of the general reputation of the existence and character of the trust or combination alleged shall be admissible.

Source: § 59-36.

Note: No change.

§ 59.1-38. Witness not excused on ground testimony may incriminate him.—No person so ordered shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or any other document in obedience to the subpoena, or under the order, of any court of record or, in vacation, of any judge of such court, in which is pending any civil, criminal or other action or proceeding for the violation of any of the provisions of this chapter, or under the order of any commissioner or referee appointed by such court to take testimony, or of any notary public or other person or officer authorized by the laws of this State to take depositions when the order made by such court or judge thereof includes a witness whose deposition is being taken before such notary public or other officer, on the ground or for the reason that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty. But no individual shall be prosecuted or be subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person or officer. No person shall be excused from testifying for the Commonwealth or the plaintiff or complainant in any proceeding under this

chapter as to any offense committed by another hereunder by reason of his testimony tending to incriminate himself, but the testimony given by such person, on motion of either the Commonwealth, the plaintiff or complainant, shall in no criminal case be used against him, nor shall he be in anywise prosecuted criminally for any offense as to which he has so testified.

Source: § 59-37.

Note: No change.

§ 59.1-39. Bond conditioned upon abstention from violations; proceedings in case of forfeiture or of disobedience of injunction.—In any proceeding under this chapter before any court of competent jurisdiction, if it appears from competent evidence that violations of the provisions of this chapter were contemplated, but not actually committed, the court in which such proceeding is pending may require a bond of the defendant in the penalty of not more than one hundred thousand dollars, conditioned upon the abstention from all violations of the provisions of this chapter for the period of one year. In case of forfeiture of the penalty of such bond, like proceedings shall be had thereon as in the case of the forfeiture of a recognizance. In the case of the disobedience to any injunction or decree, like proceedings shall be had as in the case of other contempts of court.

Source: § 59-38.

Note: No change.

§ 59.1-40. Construction of chapter.—The provisions of this chapter shall be liberally construed in order effectually to secure the enforcement of the provisions hereof for the protection of the people of the Commonwealth.

Source: § 59-39.

Note: No change.

§ 59.1-41. To what trusts, combinations and monopolies chapter applicable.—This chapter shall apply only to those trusts, combinations and monopolies which are unreasonable or inimical to the public welfare, as hereinbefore defined.

Source: § 59-40.

Note: No change.

CHAPTER 4.

MISREPRESENTATIONS AND OTHER OFFENSES CONNECTED WITH SALES

§ 59.1-42. Changing or removing, etc., trademarks, identification marks, etc.—Any person, firm, association or corporation who or which intentionally removes, defaces, alters, changes, destroys or obliterates in any manner or way or who causes to be removed, defaced, altered, changed, destroyed or obliterated in any manner or way any trademark, distinguishment or identification number, serial number or mark on or from any article or device, in order to secrete its identification with intent to defraud, shall be guilty of a misdemeanor.

Source: § 18.1-129.

Note: Transferred for better context.

§ 59.1-43. Removal or alteration of identification numbers on household electrical appliances; possession of such appliances for purposes of resale.—No person, firm, association or corporation, either individually or in association with one or more other persons, firms, associations or corporations shall remove, change or alter the serial number or other identification number stamped upon, cut into or attached as a permanent part of any household or electrical or electronic appliance where such number was stamped upon, cut into or attached to such appliance by the manufacturer thereof.

No person, firm, association or corporation shall knowingly have in his or its possession for purposes of resale a household or electrical or electronic appliance, the serial number or other identification number of which has been removed, changed or altered.

Any person, firm, association or corporation violating the provisions of this section shall be guilty of a misdemeanor.

Source: § 18.1-130.

Note: Transferred for better context.

§ 59.1-44. Untrue, deceptive or misleading advertising.—Any person, firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State, in a newspaper or other publications, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, assertion representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor. The words “untrue, deceptive and misleading,” as used in this section, shall be construed as including the advertising in any manner by any person of any goods, wares or merchandise as a bankrupt stock, receiver’s stock or trustee’s stock, if such stock contains any goods, wares or merchandise put therein subsequent to the date of the purchase by such advertiser of such stock, and if such advertisement of any such stock fail to set forth the fact that such stock contains other goods, wares or merchandise put therein, subsequent to the date of the purchase by such advertiser of such stock in type as large as the type used in any other part of such advertisement, including the caption of the same, it shall be a violation of this section.

Source: § 18.1-131.

Note: Transferred for better context.

§ 59.1-45. Same; advertising merchandise, etc., for sale with intent not to sell at price or terms advertised; prima facie evidence of violation.

(a) Any person, firm, corporation or association who in any manner advertises or offers for sale to the public any merchandise, goods, commodity, service or thing with intent not to sell, or with intent not to sell at the price or upon the terms advertised or offered, shall be guilty of a misdemeanor.

(b) In any prosecution or civil action under this section, the refusal by any person, firm, corporation or association or any employee, agent or servant thereof to sell, or the refusal to sell at the price or upon the terms advertised or offered, any merchandise, goods, commodity, service or thing advertised or offered for sale to the public, shall be prima facie evidence of a violation of this section; advertisement or offer by which such merchandise, goods, commodity, service or thing is advertised or offered for sale to the public, that the advertiser or offeror has a limited quantity or amount of such merchandise, goods, commodity, service or thing for sale, and the advertiser or offeror at the time of such advertisement or offer did in fact have at least such quantity or amount for sale.

Source: § 18.1-131.1.

Note: Transferred for better context.

§ 59.1-46. Same; failure to indicate goods, etc., are “seconds,” irregulars,” secondhand, etc.—Any person, firm, corporation or association who in any manner knowingly advertises or offers for sale to the public any merchandise, goods, commodity or thing which is defective, blemished, secondhand or used, or which has been designated by the manufacturer thereof as “seconds,” “irregulars,” “imperfects,” “not first class,” or words of similar import without clearly and unequivocally indicating in the advertisement or offer of the merchandise, goods, commodity or thing or the articles, units or parts, thereof so advertised or offered for sale to the public is defective, blemished, secondhand or used or consists of “seconds,” “irregulars,” “imperfects” or “not first class,” shall be guilty of a misdemeanor.

Source: § 18.1-131.2.

Note: Transferred for better context.

§ 59.1-47. Same; advertising former or comparative price of merchandise, etc.—Any person, firm, corporation or association who in any manner knowingly advertises as a former or comparative price of the merchandise, goods, commodity, service or thing advertised a price which was not either the prevailing price in the trade area or the advertiser’s or offeror’s own prevailing price for not less than thirty consecutive days within the four months next immediately preceding the date of the advertisement, shall be guilty of a misdemeanor, unless the date when the alleged former or comparative price did prevail is clearly and conspicuously stated in the advertisement.

Source: § 18.1-131.3.

Note: Transferred for better context.

§ 59.1-48. Same; use of word “wholesale” or “wholesaler.”—Any person, firm, corporation or association who in any manner in any advertisement or offer for sale to the public of any merchandise, goods, commodity or thing uses the words “wholesale” or “wholesaler” to represent or describe the nature of its business shall be guilty of a misdemeanor, unless such person, firm, corporation or association is actually engaged in selling at wholesale the merchandise, goods, commodity or thing advertised or offered for sale.

Source: § 18.1-131.4.

Note: Transferred for better context.

§ 59.1-49. Same; advertising new or used automobiles or trucks.—Any person, firm, corporation or association engaged in selling new or

used automobiles or trucks to the public shall be guilty of a misdemeanor if he or it in any manner advertises or offers for sale to the public any such automobile or truck (a) without stating in such advertisement or offer the make, year model, body style, manufacturer's series and number of cylinders of such automobile or truck; (b) if reference is made to equipment, without itemizing in such advertisement or offer the optional equipment physically attached to the automobile or truck and stating whether each item is included in the price; (c) if the manufacturer's suggested retail price is stated, without stating in such advertisement or offer whether such price is an F. O. B. factory or delivered price; and (d) if a price other than the manufacturer's price is stated, without stating in such advertisement or offer whether it is the cash, delivered price.

Source: § 18.1-131.5.

Note: Transferred for better context.

§ 59.1-50. Same; enjoining violation of §§ 59.1-44 to 59.1-49.—(a) Any person, firm, corporation or association who violates any one or more of the preceding sections (§§ 59.1-44 through 59.1-49) may be enjoined by any court of competent jurisdiction notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be alleged or proved.

(b) Actions for injunctive relief under this section may be brought by the Commonwealth's attorneys of this State in the name of the Commonwealth of Virginia upon their own complaint or upon the complaint of any person, firm, corporation or association. The bringing of an action under this section shall not prevent the institution or continuation of criminal proceedings against the same defendant or defendants.

Source: § 18.1-131.6

Note: Transferred for better context.

§ 59.1-51. Same; when issuer or distributor of advertisements not guilty of violation; inadvertent error.—A person, firm, corporation or association who or which, for compensation, issues or distributes any advertisement or offer, written, printed, oral or otherwise, in reliance upon the copy or information supplied him by the advertiser or offeror, shall not be deemed to have violated §§ 59.1-44 through 59.1-49 nor shall an inadvertent error on the part of any such person, firm, corporation or association be deemed a violation of such sections.

Source: § 18.1-131.7.

Note: Transferred for better context.

§ 59.1-52. Same; right to select clientele or customers not affected.—Nothing in §§ 59.1-45 through 59.1-51 shall be deemed to impair the right of any person, firm, corporation or association to select its clientele or customers.

Source: § 18.1-131.8.

Note: Transferred for better context.

§ 59.1-53. Use of names "Army," "Government," etc., prohibited; misrepresentation as to source of merchandise.—It shall be unlawful for any person, firm, corporation or association, not an agency or instrumentality of the United States Government, selling or offering for sale goods, wares or merchandise, to use or cause or permit to be used in the corporate or trade name, or description of the seller or the place where the goods,

wares or merchandise are offered for sale, any of the following words or expressions, viz., "Army," "Navy," "Marine Corps," "Marines," "Coast Guard," "Government," "Post Exchange," "P-X," or "G.I."

No person, firm, corporation or association selling or offering for sale any article or merchandise, shall in any manner represent, contrary to fact, that the article was made for, or acquired directly or indirectly from, the United States Government or its military or naval forces or any agency of the United States Government, or that it has been disposed of by the United States Government.

Any person, firm, corporation or association violating any provision of this section shall be guilty of a misdemeanor.

Source: § 18.1-132.

Note: Transferred for better context.

§ 59.1-54. Misrepresentations as to agricultural products.—Misrepresentation by advertising in the press or by radio or by television, or misrepresentation by letter, statement, mark representing grade, quality or condition, label or otherwise in handling, selling, offering or exposing for sale any agricultural commodities is hereby prohibited.

Any person, firm, association or corporation who shall violate any of the provisions of this section shall be punished by a fine of not less than five dollars nor more than five hundred dollars for each offense.

The Director of the Division of Markets, with the approval of the Commissioner of Agriculture and Commerce, may, in his discretion, cause prosecutions for violations of this section to be instituted through the attorneys of the Commonwealth of this State, or otherwise, in counties or cities of the State where in his opinion violations of this section are found.

Source: § 18.1-133.

Note: Transferred for better context. The word "Commerce" has been substituted for "Immigration".

§ 59.1-55. Fraud and misrepresentation in sale of liquid fuels, lubricating oils and similar products.—It shall be unlawful for any person, firm, association or corporation, to store, sell, expose for sale or offer for sale any liquid fuels, lubricating oils or other similar products, in any manner whatsoever, so as to deceive or tend to deceive the purchaser as to the nature, quality and identity of the product so sold or offered for sale.

Source: § 18.1-134.

Note: Transferred for better context.

§ 59.1-56. Same; sale from pump indicating other brand.—It shall be unlawful for any person, firm, association or corporation to store, keep, expose for sale, offer for sale or sell, from any tank or container, or from any pump or other distributing device or equipment, any other liquid fuels, lubricating oils or other similar products than those indicated by the name, trade name, symbol, sign or other distinguishing mark or device of the manufacturer or distributor, appearing upon the tank, container, pump or other distributing equipment from which the same are sold, offered for sale or distributed.

Source: § 18.1-135.

Note: Transferred for better context.

§ 59.1-57. Same; imitating indicia of other brands.—It shall be unlawful, for any person, firm, association or corporation to disguise or camouflage his or their own equipment by imitating the design, symbol or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed.

Source: § 18.1-136.

Note: Transferred for better context.

§ 59.1-58. Same; false trade name or mixing brands.—It shall be unlawful for any person, firm, association or corporation to expose for sale, offer for sale or sell, under any trade-mark or trade name in general use, any liquid fuels, lubricating oils or other like products, except those manufactured or distributed by the manufacturer or distributor marketing liquid fuels, lubricating oils or other like products under such trade-mark or trade name, or to substitute, mix or adulterate the liquid fuels, lubricating oils or other similar products sold, offered for sale or distributed under such trade-mark or trade name.

Source: § 18.1-137.

Note: Transferred for better context.

§ 59.1-59. Same; assisting in violation of §§ 59.1-55 to 59.1-58.—It shall be unlawful for any person, firm, association or corporation to aid or assist any other person, firm, association or corporation in the violation of the provisions of §§ 59.1-55 to 59.1-58 by depositing or delivering into any tank, receptacle or other container any other liquid fuels, lubricating oils or like products than those intended to be stored therein and distributed therefrom, as indicated by the name of the manufacturer or distributor or the trade-mark or trade name of the product displayed on the container itself, or on the pump or other distributing device used in connection therewith.

Source: § 18.1-138.

Note: Transferred for better context.

§ 59.1-60. Same; label required.—There shall be firmly attached to or painted at or near the point of outlet from which lubricating oil is drawn or poured out for sale or delivery a sign or label consisting of the word or words in letters not less than one inch in height comprising the brand or trade name of such lubricating oil. But if any lubricating oil shall have no brand or trade name, the above sign or label consist of the words "lubricating oil, no brand."

Source: § 18.1-139.

Note: Transferred for better context.

§ 59.1-61. Same; punishment for violation of §§ 59.1-55 to 59.1-60.—Any person, firm, association or corporation or any officer, agent or employee thereof who shall violate any provision of §§ 59.1-55 to 59.1-60, inclusive, upon conviction shall be punished by a fine for the first offense of not less than twenty-five dollars nor more than two hundred dollars, and for a second or any subsequent offense by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in jail of not more than one year, or both.

Source: § 18.1-140.

Note: Transferred for better context.

§ 59.1-62. Sale of goods marked “sterling” and “sterling silver.”—A person who makes or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped or branded with the words “sterling” or “sterling silver,” or encased or enclosed in any box, package, cover or wrapper, or other thing in or by which such article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trade-mark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty-five one thousandths part of the component parts of the metal of which such article is manufactured is pure silver, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars or be confined in jail not less than ten days nor more than sixty days, or both.

Source: § 18.1-141.

Note: Transferred for better context.

§ 59.1-63. Sale of goods marked “coin” and “coin silver.”—A person who makes or sells or offers to sell or dispose of, or has in his possession with intent to sell or dispose of, any article of merchandise marked, stamped or branded with words “coin” or “coin silver,” or encased or enclosed in any box, package, cover, wrapper or other thing in or by which such article is packed, enclosed, or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trade-mark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is coin or coin silver, unless nine hundred one-thousandths part of the component parts of the metal of which such article is manufactured is pure silver, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars or be confined in jail not less than ten nor more than sixty days, or both.

Source: § 18.1-142.

Note: Transferred for better context.

§ 59.1-64. Regulating sale of merchandise made of gold.—Any person who marks or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise made of gold of a less carat of fineness than is stamped or marked on it or of a less carat of fineness than is engraved, stamped or imprinted on the tag, card, box, label, package, wrapper, cover or other thing in or by which such article is packed, enclosed or otherwise prepared for sale or disposition shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars for such offense or be confined in jail not less than ten days nor more than sixty days, or both.

Source: § 18.1-143.

Note: Transferred for better context.

§ 59.1-65. Regulating sale of kosher meat and meat preparations.—Any person, who, with intent to defraud, sells or exposes for sale any meat or meat preparation, and falsely represents the same: (1) to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or (2) as having been prepared under, and of a product or products sanctioned by, the orthodox Hebrew religious requirements; or

who, with like intent, falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language, shall be guilty of a misdemeanor.

Source: § 18.1-144.

Note: Transferred for better context.

§ 59.1-66. Buying, etc., certain secondhand materials; intent; possession.—If any person buy or receive secondhand grate baskets, keys, bells and bell fixtures, gas fixtures, water fixtures, water pipes, gas pipes, or any part of such fixtures or pipes with intent to defraud, he shall be confined in jail not less than one month nor more than six months. Possession of any such secondhand baskets, keys, bells and bell fixtures, water fixtures, gas fixtures, water pipes, gas pipes, or any part of such fixtures or pipes if bought or received from any other person than the manufacturer thereof or his authorized agent or the owner thereof shall be prima facie evidence of such intent.

Source: § 18.1-145.

Note: Transferred for better context.

§ 59.1-67. Buying, etc., pig iron, etc., with intent to defraud; possession evidence of intent.—If any person buy or receive pig iron or railroad, telephone, telegraph, coal mining, industrial, manufacturing or public utility iron, brass, copper, metal or any composition thereof with intent to defraud, he shall be confined in the penitentiary not less than one year nor more than two years or in the discretion of the jury or the court trying the case without a jury, not more than twelve months in jail. Possession of any pig iron or railroad, telephone, telegraph, coal mining, industrial, manufacturing or public utility iron, brass, copper, metal or any composition thereof, if bought or received from any other person than the manufacturer thereof or his authorized agent or of a regularly licensed dealer therein, shall be prima facie evidence of such intent.

Source: § 18.1-146.

Note: Transferred for better context.

§ 59.1-68. Acceptance of promissory notes in payment for food sold at retail.—As used in this section, "food" includes food, groceries and beverages, for human consumption. "Retailer" means a person who sells food for consumption and not for resale.

It shall be unlawful for any retailer to accept, in payment for any food sold by him to a customer, a promissory note or notes for an amount in excess of twice the sales price of food delivered by him to the customer. As used in this section the word "delivered" means that actual physical delivery into the exclusive custody and control of the customer is made within seven days of the receipt of the note by the seller.

Any person who violates the provisions of this section shall be guilty of a misdemeanor and punished accordingly.

Source: § 18.1-146.1.

Note: Transferred for better context.

§ 59.1-68.1. Penalty for violations.—Unless otherwise provided by law, any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be punished as provided in § 18.1-9.

Source: New.

Note: This section is added for Code users' convenience.

CHAPTER 5.

TRANSACTING BUSINESS UNDER ASSUMED NAME.

§ 59.1-69.—Certificate required of person or corporation transacting business under assumed name.—No person or corporation shall conduct or transact business in this State under any assumed or fictitious name unless such person or corporation shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted, and the names of each and every person or corporation owning the same, with their respective post office and residence addresses (and, when the corporation is a foreign corporation, the date of the certificate of authority to do business in this State issued to it by the State Corporation Commission), and file the same in the office of the clerk of the court in which deeds are recorded in the county or corporation wherein the business is to be conducted.

Source: § 59-169.

Note No change.

§ 59.1-70. Corporation to file copy of certificate with State Corporation Commission.—When business is conducted in this State under an assumed or fictitious name by a corporation, such corporation shall file in the office of the clerk of the State Corporation Commission a copy of such certificate, duly attested by the clerk of the court in which the original is on file.

Source: § 59-170.

Note: No change.

§ 59.1-71. Filing power of attorney for service of process.—Such person or persons owning and transacting business as above set out who do not reside in the county or city in which a place of business is operated, shall, before commencing to do business in such city or county, by written power of attorney, appoint some practicing attorney at law residing in the county or city wherein the place of business is located, its attorney or agent, upon whom all legal processes against the owner may be served, and who shall be authorized to enter an appearance in its own behalf. Such power of attorney shall be recorded in the clerk's office in which deeds are recorded, of the county or city wherein the place of business is located. Such power of attorney shall remain effective until lawfully revoked, and when lawfully revoked, a new power of attorney to the same or some other attorney shall be immediately executed and recorded. Written notice of the resignation of the attorney, or of the voluntary revocation of such power of attorney by the owner, shall be forthwith filed in the clerk's office where it is recorded. And the clerk shall note such resignation or revocation on the margin of the page of the book wherein the power of attorney is recorded, and be entitled to a fee of twenty-five cents therefor; and until this is done, such revocation shall be ineffective and the original power of attorney shall remain effective.

Source: § 59-171.

Note: No change.

§ 59.1-72. Service of process upon clerk of court.—If there be no such attorney in fact residing in such county or city, or if for any reason such attorney in fact be not subject to personal service, then all legal processes against such owner may be served upon the clerk of the court of such county or city wherein such place of business is located having

jurisdiction of the suit, action or proceeding. When process or notice is so served under the provisions of this chapter, upon the clerk of the court of the county or city wherein is located the place of business, such clerk upon whom such process or notice is served shall forthwith mail a copy of such process or notice to the defendant or defendants therein named at such address, if any, as may have been filed, of the owner, with such clerk. And such clerk shall certify in such papers in the cause the fact of mailing such process or notice, and the address to which it was mailed, or that no such address is on file.

Such process or notice when so served and certified to have been so mailed, or if no such address has been filed, the services as herein provided alone shall constitute personal service, and authorize a judgment or decree in personam against such owner.

Source: § 59-172.

Note: No change.

§ 59.1-73. Fee of clerk.—For mailing the process or notice and the making of certificate of such mailing, or the inability to secure the proper address for mailing, the clerk of any court subject to the provisions of this chapter shall be entitled to a fee of one dollar to be advanced by the plaintiff and to be taxed as a part of the costs in the proceeding.

Source: § 59-173.

Note: No change.

§ 59.1-74. Recordation of certificate and registration of names.—The clerk with whom the certificate provided for in § 59.1-69 is filed shall keep a book in which all such certificates shall be recorded, with their date of record, and shall keep a register in which shall be entered in alphabetical order the name under which every such business is conducted, the name of the statutory agent, and the names of every person owning the same. The clerk shall be entitled to a fee of fifty cents for filing and recording such certificate and entering such names. No license shall be issued by the commissioner of the revenue until the certificate has been made and filed in the clerk's office and evidence of same produced before him.

Source: § 59-174.

Note: Internal section reference has been conformed.

§ 59.1-75. Penalty for violation.—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both.

Source: § 59-175.

Note: No change.

§ 59.1-76. Effect on right of action of failure to file certificate.—The failure of any person or corporation to comply with the provisions of this chapter shall not prevent a recovery by or against such person or corporation, in any of the courts in this State on any cause of action heretofore or hereafter arising, but no action shall be maintained in any of the courts in this State by any such person, corporation or his or its assignee or successor in title unless and until the certificate required by this chapter has been filed.

Source: § 59-176.

Note: No change.

CHAPTER 6.

REGISTRATION AND PROTECTION OF TRADE-MARKS AND SERVICE MARKS.

§ 59.1-77. **Short title.**—This chapter shall be known as the “Virginia Trade-Mark and Service Mark Act.”

Source: § 59-189.2.

Note: No change.

§ 59.1-78. **Definitions.**—When used in this chapter, unless a different meaning clearly appears from the context:

(1) “*Trade-mark*” means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

(2) “*Service mark*” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others, and includes, without being limited to, marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising.

(3) “*Person*” means an individual, partnership, corporation, or unincorporated association.

(4) “*Applicant*” means a person filing an application for registration of a trade-mark or service mark under this chapter, and includes his legal representatives, successors and assigns.

(5) “*Registrant*” means a person to whom the registration of a trade-mark or service mark under this chapter is issued, and includes his legal representatives, successors and assigns.

(6) A trade-mark shall be deemed to be “*used*” in this State when it is placed on goods or their containers or on tags or labels affixed thereto and the goods are sold or otherwise distributed in this State.

(7) A service mark shall be deemed to be “*used*” in this State when it identifies a service, whether or not the service rendered in connection with the sale or distribution of goods of the owner of the mark, rendered or received in this State.

(8) “*Commission*” means the State Corporation Commission.

Source: § 59-189.3.

Note: No change.

§ 59.1-79. **What shall not be registered as a trade-mark.**—A trade-mark by which the goods of an applicant may be distinguished from the goods of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive or scandalous matter; or

(b) Consists of or comprises matter which may falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute; or

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) Consists of or comprises the name, signature or portrait of a living individual, except with his written consent; or

(e) Consists of a mark which, (1) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname; provided, however, that nothing in this section (e) shall prevent the registration of a mark by the applicant which has become distinctive of the applicant's goods used in this State. The Commission may accept as evidence that the mark has become distinctive of the applicant's goods, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the five years next preceding the date of the filing of the application for registration; or

(f) Consists of or comprises a trade-mark which so resembles a trade-mark currently registered in this State, or a trade-mark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

Source: § 59-189.4.

Note: No change.

§ 59.1-80. Application for registration of trade-mark; contents; filing fee.—Subject to the limitations set forth in this chapter, any person who owns and uses a trade-mark in this State may file in the office of the Commission, on a form to be furnished by it, an application for registration of that trade-mark setting forth the following information:

(a) The name and business address of the applicant; and, if a corporation, the state of incorporation.

(b) The goods in connection with which the mark is used, the manner in which the mark is used in connection with the goods, and the class in which the goods fall,

(c) The date when the trade-mark was first used anywhere and the date when it was first used in this State by the applicant or his predecessor in business, and

(d) A statement that the applicant is the owner of the trade-mark and that no other person has the right to use the trade-mark in this State either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed by the applicant and sworn to by the individual who signed the name of the applicant.

The application shall be accompanied by a specimen or facsimile of such trade-mark in triplicate.

The application for registration shall be accompanied by a filing fee of ten dollars payable to the Commission, which shall not be returned if the application is not granted.

Source: § 59-189.5.

Note: No change.

§ 59.1-81. Registration of service marks.—Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, service marks used in this State shall be registrable, in the same

manner and with the same effect as trade-marks, and when registered they shall be entitled to the protection provided herein in the case of trade-marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration and renewal of trade-marks.

Source: § 59-189.6.

Note: No change.

§ 59.1-82. Certificate of registration; issuance; contents; admissibility in evidence; fee.—Upon compliance by the applicant with the requirements of this chapter, the Commission shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trade-mark or service mark, the date claimed for the first use of the trade-mark or service mark anywhere, and the date claimed for the first use of the trade-mark or service mark in this State, the class of goods or services, and a description of the goods or services on which the trade-mark or service mark is used, a reproduction of the trade-mark or service mark, the registration date and the term of the registration.

Any certificate of registration issued by the Commission or a copy thereof duly certified by the Commission shall be admissible in evidence as competent and sufficient proof of the registration of such trade-mark or service mark in any action or proceeding in any court.

The fee for each certificate of registration or certified copy thereof shall be five dollars.

Source: § 59-189.7.

Note: No change.

§ 59.1-83. Duration and renewal of registration; renewal fee; existing registrations.—Registration of a trade-mark or service mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the Commission, the registration may be renewed for a like term. A renewal fee of ten dollars, payable to the Commission shall accompany the application for renewal of the registration.

A trade-mark or service mark registration may be renewed for successive periods of ten years in like manner.

Any registration in force on July 1, 1958, shall remain in force so long as it would have remained in force if this chapter had not been enacted; and may be renewed as provided in this section.

Source: § 59-189.8.

Note: No change.

§ 59.1-84. Assignment.—Any trade mark or service mark and its registration hereunder shall be assignable with the good will of the business in which the trade-mark or service mark is used, or with that part of the good will of the business connected with the use of and symbolized by the trade-mark or service mark.

Assignment shall be by instrument in writing duly executed and may be filed with the Commission upon the payment of a fee of ten dollars payable to the Commission which, upon filing the assignment, shall issue

in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. The assignment of a registration under this chapter shall be void as against any subsequent purchaser for value without notice, unless it is filed with the Commission within three months after the date thereof or prior to such subsequent purchase.

Source: § 59-189.9.

Note: No change.

§ 59.1-85. Register of trade-marks and service marks.—The Commission shall keep for public examination a register of trade-marks and service marks registered or renewed under this chapter until five years after the expiration thereof and all renewals thereof.

Source: § 59-189.10.

Note: No change.

§ 59.1-86. Cancellation of registration.—The Commission shall cancel from the register:

(1) Any registration concerning which the Commission shall receive a request for cancellation thereof from the registrant or the assignee of record;

(2) All registrations granted under this chapter and prior acts, and not renewed in accordance with the provisions hereof;

(3) Any registration concerning which the Commission shall find on its own motion, or on petition of any person who alleges that he is or will be damaged by such registration,

(a) That the registered trade-mark or service mark has been abandoned,

(b) That the registrant is not the owner of the trade-mark or service mark,

(c) That the registration was granted improperly,

(d) That the registration was obtained fraudulently,

(e) That the registered trade-mark or service mark so resembles a trade-mark or service mark, or trade name, previously used in this State by another and not abandoned as to be likely when applied to the goods or services of the registrant to cause confusion or mistake, or to deceive.

Source: § 59-189.11.

Note: No change.

§ 59.1-87. Classification of goods and services.—The following classes of goods and services are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and may be added to, deleted from, or changed by order of the Commission.

A single application for registration of a trade-mark may include any or all goods upon which the trade-mark is actually being used comprised in a single class but may not include goods which fall within different classes.

A single application for registration of a service mark may include all services in connection with which the service mark is actually being used comprised in a single class but may not include services which fall within different classes.

The said classes are as follows:

GOODS

Class	Title
1	Raw or partly prepared materials.
2	Receptacles.
3	Baggage, animal equipment, portfolios, and pocketbooks.
4	Abrasives and polishing materials.
5	Adhesives.
6	Chemicals and chemical compositions.
7	Cordage.
8	Smokers' articles, not including tobacco products.
9	Explosives, firearms, equipment, and projectiles.
10	Fertilizers.
11	Inks and inking materials.
12	Construction materials.
13	Hardware and plumbing and steam-fitting supplies.
14	Metals and metal castings and forgings.
15	Oils and greases.
16	Protective and decorative coatings.
17	Tobacco products.
18	Medicines and pharmaceutical preparations.
19	Vehicles.
20	Linoleum and oiled cloth.
21	Electrical apparatus, machines, and supplies.
22	Games, toys, and sporting goods.
23	Cutlery, machinery, and tools, and parts thereof.
24	Laundry appliances and machines.
25	Locks and safes.
26	Measuring and scientific appliances.
27	Horological instruments.
28	Jewelry and precious-metal ware.
29	Brooms, brushes, and dusters.
30	Crockery, earthenware, and porcelain.
31	Filters and refrigerators.
32	Furniture and upholstery.
33	Glassware.
34	Heating, lighting, and ventilating apparatus.
35	Belting, hose, machinery packing, and nonmetallic tires.
36	Musical instruments and supplies.
37	Paper and stationery.
38	Prints and publications.
39	Clothing.
40	Fancy goods, furnishings, and notions.
41	Canes, parasols, and umbrellas.
42	Knitted, netted, and textile fabrics, and substitutes therefor.
43	Thread and yarn.
44	Dental, medical, and surgical appliances.

Class	Title
45	Soft drinks and carbonated waters.
46	Foods and ingredients of foods.
47	Wines.
48	Malt beverages and liquors.
49	Distilled alcoholic liquors.
50	Merchandise not otherwise classified.
51	Cosmetics and toilet preparations.
52	Detergents and soaps.

SERVICES

- 100 Services not otherwise classified.
- 101 Advertising.
- 102 Insurance and financial.
- 103 Construction and repair.
- 104 Communication.
- 105 Transportation and storage.
- 106 Material treatment.
- 107 Education and entertainment.

Source: § 59-189.12.

Note: No change.

§ 59.1-88. **Infringement.**—Subject to the provisions of § 59.1-89, any person who shall

(a) Use, in this State, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of any registered trade-mark or service mark in connection with the sale, offering for sale, or advertising of any goods or services in a manner likely to cause confusion or mistake or to deceive purchasers as to the source or origin of such goods or services; or

(b) Reproduce, counterfeit, copy, or colorably imitate any such trade-mark or service mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this State of such goods or services.

Shall be liable to civil action by the registrant for any or all of the remedies hereinafter provided in § 59.1-89, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trade-mark or service mark is intended to be used to cause confusion or mistake or to deceive purchasers.

Source: § 59-189.13.

Note: Internal section references have been conformed.

§ 59.1-89. **Remedies.**—Any owner of a trade-mark or service mark registered under this chapter, or prior acts, and in force and effect, may proceed by suit in a circuit or corporation court, or court of equity jurisdiction, to enjoin the manufacture, use, display or sale in this State of any counterfeits or imitations thereof and the court may grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable, and may require the defendants to pay to such

owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and the court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the complainant, to be destroyed.

Source: § 59-189.14.

Note: No change.

§ 59.1-90. **Common-law rights not affected.**—Nothing herein shall adversely affect the enforcement of common-law rights in trade-marks or service marks.

Source: § 59-189.15.

Note: No change.

§ 59.1-91. **Commission may consider final judgments involving registration.**—In any proceeding before the Commission involving the right to registration, or the cancellation of registration, in whole or in part, the final judgment of a court of record involving the right to registration, or ordering the cancellation of registration, in whole or in part, may be offered in evidence to the Commission or filed with the Commission by either party to the registration or cancellation proceeding before the Commission. The Commission may consider the judgment of the court in determining what action it should take with respect to the registration or cancellation involved.

Source: § 59-189.16.

Note: No change.

§ 59.1-92. **Appeals from final action of Commission.**—From any final action of the Commission under the provisions of this chapter an appeal shall lie of right to the Supreme Court of Appeals in accordance with the provisions of § 12-63 of the Code of Virginia.

Source: § 59-189.17.

Note: No change.

CHAPTER 7.

NAMES, MARKS AND DEVICES ON CERTAIN CONTAINERS AND OTHER ARTICLES

§ 59.1-93. **“Person” defined.**—The word “person” as used in this chapter shall mean an individual, firm or corporation.

Source: § 59-190.

Note: No change.

§ 59.1-94. **Filing and publication of description of names, marks or devices.**—Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, cider, ginger ale, milk, cream, ice cream, soft drinks or other beverages, or medicines, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, tins, crates or kegs, with his or its name or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, siphon heads, tins, crates, or kegs, or the boxes used by him, or any person engaged in the business of regularly supplying clean laundered garments, towels, table or bed linens or other such articles with his

or its name or other marks or devices woven, impressed or produced thereon, and who periodically exchanges such clean articles for soiled articles, may file in the office of the clerk of the county or corporation court in which his principal office of business is situated or in the clerk's office of the chancery court of the city of Richmond, if such principal office of business is situated in such city, or if such person shall manufacture, supply or bottle out of this State, then in any county in this State, and also in the office of the State Corporation Commission, a description of the name or names or marks or devices so used by him and cause such description to be printed once in each week, for three weeks successively, in a newspaper published in the county or corporation in which such description may have been filed as aforesaid, and if there be no newspaper published in the county or corporation in which such description has been filed, then in the newspaper published nearest to that county or corporation, and he shall thereupon be deemed the proprietor of such name, mark or device, and of every vessel or receptacle or clean laundered or soiled articles mentioned herein upon which it may be branded, stamped, engraved, etched, blown, impressed, woven or otherwise produced.

Source: § 59-191.

Note: No change.

§ 59.1-95. Certified copy as evidence; fees of the State Corporation Commission.—A certified copy of the description of the names, marks or devices referred to in this chapter, and filed with the State Corporation Commission, shall be prima facie evidence of the ownership of such bottles, siphons, boxes, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter in the trial of any case arising under the provisions of this chapter. For filing such paper or giving such copy, the State Corporation Commission may make a reasonable charge not exceeding five dollars.

Source: § 59-192.

Note: No change.

§ 59.1-96. Offenses and punishments.—It shall be unlawful for any person to fill with soda waters, mineral or aerated waters, cider, ginger ale, milk, or soft drinks, or other beverages or with medicine, medical preparations, perfumery, oils, compounds or mixtures, any bottle, box, crate, tin or keg so marked or distinguished as provided in § 59.1-94 with or by any name, mark or device, of which a description shall have been filed and published, as provided in such section, or to deface, erase, obliterate, cover up or otherwise remove, or conceal, any such name, mark or device thereon, or to sell, buy, give, take, receive, or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased by an agreement in writing from, the person whose mark or device shall be or shall have been in or upon the bottle, siphon, siphon head, crate, tin or keg so filled, trafficked in, used or handled as aforesaid. It shall also be unlawful for any person to sell, buy, rent, or otherwise traffic in any clean laundered or soiled articles mentioned in this chapter so marked or designated as provided in § 59.1-94 with or by any name, mark or device, of which a description shall have been filed and published, as provided in such section, or to deface, erase, obliterate, cover up or otherwise remove or conceal, any such name, mark or device thereon, or to sell, buy, give, take, receive or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased by an agreement in writing from, the person whose mark or device shall be or shall have been in or upon any such clean laundered or soiled article. Any person offending against the provisions of this section shall be deemed guilty of a

misdemeanor, and shall be punished for the first offense by imprisonment for not less than ten days, nor more than one year, or by a fine of five dollars, and in addition thereto fifty cents for each and every such bottle, box, siphon, siphon head, crate, tin or keg, sold, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment for not less than twenty days nor more than one year, or by a fine of not less than fifty dollars, and in addition thereto one dollar for each and every bottle, box, siphon, crate, tin or keg filled, sold, used, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the judge or jury before whom the offense shall be tried; provided that in the case of any person offending against the provisions of this section relating to clean laundered or soiled articles such fine for the first offense shall be not less than twenty-five dollars nor more than two hundred dollars and for each subsequent offense, the fine shall be not less than fifty nor more than four hundred dollars.

Source: § 59-193.

Note: Internal section reference has been conformed.

§ 59.1-97. Presumptive evidence of unlawful use and trafficking in marked containers and other articles.—The use by any person other than the person whose device, name or mark shall be or shall have been upon the same without such written consent as aforesaid, of any such marked or distinguished bottle, box, siphon, siphon heads, crate, tin or keg, and filed and published as aforesaid, for the sale therein of soda water, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages, or of any articles of merchandise, medicines, medical preparations, perfumery, oils, compounds, mixtures or preparations, or for the furnishing of such or similar beverages to customers, or the receiving, buying, selling, using, disposing of or trafficking in any such bottles, boxes, siphons, siphon heads, crates, tins or kegs by any person other than the person having his name, mark or device thereon, or the having by any junk dealer, or dealers in second-hand articles, venders of bottles, etc., possession of any such bottles, boxes, siphons, siphon heads, crates, tins, or kegs, and description of the marks, names or devices whereon shall have been so filed and published, as aforesaid, or any such use of such device, name or mark distinguishing any clean laundered or soiled article mentioned in this chapter or any such receiving, buying, selling, using, disposing of or trafficking in any such article by any person other than the person having his name, mark or device thereon, or such having by any such junk dealer or other second-hand dealers possession of any such article and description of the marks, names or devices whereon shall have been so filed and published, as aforesaid, shall be presumptive evidence of the unlawful use and purchase of and trafficking in such bottles, siphons, boxes, siphon heads, crates, tins, kegs, or clean laundered or soiled article mentioned in this chapter.

Source: § 59-194.

Note: No change.

§ 59.1-98. Procedure when violation charged; awarding possession of property to owner.—Whenever any person mentioned in § 59.1-94 or his agent shall make oath before any justice of the peace, or other officer empowered to issue criminal warrants, that he has reason to believe, and does believe that within the city, town or county of such justice of the peace or other officer, any of his bottles, boxes, siphons, siphon heads, crates, tins, kegs, or clean laundered or soiled articles mentioned in this chapter a description of the names, marks or devices whereon has been filed and published as aforesaid, are being unlawfully used or filled or had,

by any person manufacturing or selling soda, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealer in second-hand articles, vendor of bottles, or any other person has any such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter in his possession or secreted in any place, the justice of the peace or other officer, before whom such oath is made must thereupon issue a search warrant to discover and obtain the same, and may also issue his warrant stating the offense charged, and cause to be brought before any county or municipal court having jurisdiction the person in whose possession such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter may be found, and shall then inquire into the circumstances of such possession and if such county or municipal court finds such person has been guilty of a violation of § 59.1-96, it must impose the punishment therein prescribed, and it shall award possession of the property taken upon such warrant to the owner thereof.

Source: § 59-195.

Note: Internal section references have been conformed. The words "county or municipal court" are substituted for "trial justice" and the word "it" is substituted for "he" to conform.

§ 59.1-99. Right of appeal; commitment to jail; return and filing of papers.—Any person convicted under the provisions of the preceding section shall have the right of appeal from the decision of such court not of record to the circuit, corporation or hustings court, and shall, unless let to bail, be committed to jail, until next term of such court of record, and the witnesses shall be recognized to appear at the same time. The judge of the court not of record shall return and file all of the papers in each case with the clerk of the court of record.

Source: § 59-196.

Note: The words "court not of record" are substituted for "trial justice," and the words "of record" are added in the first sentence. In the second sentence, the words "judge of the court not of record" are substituted for "trial justice," and the words "of record" are added.

§ 59.1-100. Trial on appeal.—The appeal shall be tried without formal pleadings in writing, and the accused shall be entitled to trial by jury in the same manner as if he had been indicted for the offense in such court.

Source: § 59-197.

Note: No change.

§ 59.1-101. Requiring or accepting deposit upon property not deemed a sale thereof.—The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, siphon, siphon head, crate, tin, keg, freezer, can, spoon, block, mould, tray, pan, brick, pail, tub, refrigerator box, cutlery, glass, china, chair, table, sign or clean laundered or soiled article mentioned in this chapter shall not be deemed or constitute a sale of such property, either optional or otherwise in any proceeding under this chapter.

Source: § 59-198.

Note: No change.

§ 59.1-102. Records; previous filing and publishing of names, marks, etc.—The Secretary of the Commonwealth shall deliver the records

of his office relating to names, marks and devices on such property as is mentioned in § 59.1-94 to the State Corporation Commission. No person who has filed prior to July first, nineteen hundred forty-eight, in the proper offices, a description of the name or names, marks or devices upon such property and has caused the same to be published according to the law existing at the time of such filing and publication, shall be required to again file and publish such description to be entitled to the benefits of this chapter.

Source: § 59-199.

Note: Internal section reference has been conformed.

CHAPTER 8. TIMBER BRANDS.

§ 59.1-103. Persons engaged in lumbering or rafting on certain waters may adopt mark of designation.—It shall be lawful for any person at any time engaged in lumbering or rafting in any manner upon the Elizabeth river in the State of Virginia, or on any of its tributaries, or in the Albemarle and Chesapeake Canal or in the Dismal Swamp Canal or in any river or creek lying within the boundaries of this State and connecting with either of such canals or upon the Chesapeake Bay, to adopt a mark of designation wherewith to stamp or mark all saw-logs, piles, hewn timber or square timber put or intended to be put by him in any of such streams to be floated and rafted on the same. Such mark may be either in letters, figures, words, names or other devices at the discretion of the person adopting it.

A statement of the mark so adopted with a certificate appended that the same has been adopted as the mark of designation aforesaid, signed by the person adopting the same, shall be furnished to the clerk of the circuit court of the county or corporation court of the city where such person is doing business and has his principal office.

No person shall be entitled to adopt more than one of any of the respective kinds of marks or stamps aforesaid as his mark of designation, but any such person shall not be prohibited from using any other mark in addition to such mark of designation for distinguishing different kinds or lots of timber obtained from different localities, if it does not interfere with the mark of designation of any other person.

Source: § 59-200.

Note: No change.

§ 59.1-104. Fees for granting certificates of marks of designation.—The clerk of such court shall be entitled to demand and receive for the first certificate of such mark of designation the sum of seventy-five cents and for every subsequent certificate of like nature the sum of fifty cents.

Source: § 59-201.

Note: No change.

§ 59.1-105. Certificate as evidence of right to use marks.—Any certificate of such mark of designation shall be prima facie evidence of the right of the person filing the same to use the mark or marks mentioned therein.

Source: § 59-202.

Note: No change.

§ 59.1-106. Sale of unclaimed timber, etc., found adrift; disposition of proceeds.—Any person, except the owner thereof, taking up and securing any saw-log, pile, hewn timber or square timber detached from any raft and found adrift or aground on any of the waters or streams mentioned in § 59.1-138, shall promptly report such fact to the owner thereof, or shall lodge a list containing a description of the quantity, quality, and marks, if any, of such timber with a justice of the peace living nearest to the place where such timber was so found and secured, which justice of the peace shall promptly advertise the same for five consecutive days in a newspaper published in the city of Norfolk. If such timber shall not be claimed by the owner thereof within thirty days after such publication it shall be lawful for the justice of the peace to order the sale thereof at public auction by an officer after giving five days' notice of the time, place, and terms of such sale by not less than six hand-bills posted in the most public places in the vicinity where the same was found and within the county wherein the justice of the peace may reside. Out of the proceeds of such sale the justice of the peace, after paying the expenses of the advertisement and handbills, together with all the other costs of such proceeding at law, shall pay to the person or persons who found and secured the timber ten cents for each piece thereof so taken and secured, and the residue of such proceeds of sale shall be paid into the State treasury for the benefit of the State.

Source: § 59-203.

Note: Internal section reference has been conformed.

§ 59.1-107. Fraudulent use of mark or claim of ownership; defacement of mark, etc.; destruction or conversion of timber, etc.—If any person shall fraudulently or wilfully use any such registered mark, or shall fraudulently claim to be the owner of any such marked saw-log, pile, square or hewn timber found or being in any of the aforesaid streams or waters, whether floating or aground or tied up to any wharf or other object, either as part of a raft or not, or shall take and carry away any such marked saw-log, pile or piece of square or hewn timber without the authority of the owner thereof, or shall wilfully deface or obliterate any such mark, name, figure, letter, or other designation thereon, or shall fraudulently saw, split, consume, destroy, or injure any such marked saw-log, pile square or hewn timber, or shall without the consent of the owner thereof sell or convert the same to his own use unless it shall have been duly forfeited according to the provisions of this chapter or according to other provisions of law, he shall for every such offense upon conviction be confined in jail not less than sixty days and not exceeding twelve months.

Source: § 59-204.

Note: No change.

§ 59.1-108. Who are timber dealers.—Every person, firm or corporation dealing in logs or timber in any form to be floated on the streams of this State shall be called and known as timber dealers, and as such may adopt a brand or trade-mark in the manner and with the effect hereinafter provided.

Source: § 59-205.

Note: No change.

§ 59.1-109. Timber dealer may adopt brand or trade-mark; recordation.—Every such dealer desiring to adopt a brand or trade-mark who has not heretofore adopted one may do so by the execution and acknowledgement, as deeds are required to be acknowledged, of a writing substantially in form and effect as follows:

“Notice is hereby given that I (or we or the undersigned company, as the case may be) have (or has) adopted the following brand or trade-mark to be used in my (or our or its) business as a timber dealer (or dealers, as the case may be), to-wit: (Here insert the word, letter or letters, or figures, or device or devices adopted.)

“Given under my (or our or its) hand and seal this day of, nineteen

..... (Seal.)”

Such writing may be proved as deeds are proved in this State and shall be recorded in the office of the clerk of the circuit court of the county in which the principal office or place of business of such timber dealer may be and of such other counties as such dealer may do business in. Nothing in this section shall be construed to prevent any person who has heretofore used any particular brand from adopting the same as his trade-mark, and when he shall have adopted it as his trade-mark as provided in this section it shall apply to the trees and timber heretofore marked with such brand as well as to such as may be hereafter so marked.

Source: § 59-206.

Note: No change.

§ 59.1-110. Using recorded brand or trade-mark without authority.—Every brand or trade-mark so adopted shall, from the date of its recordation be the exclusive brand or trade-mark of the person, firm or corporation adopting it, and any other person, firm or corporation knowingly using or attempting to use the same, without authority in writing from the owner thereof, shall be guilty of a misdemeanor and fined for each offense in so using the same not less than twenty nor more than two hundred dollars, and shall be liable to the owner of such brand or trade-mark for all the damages sustained by such owner by reason of such unauthorized use.

Source: § 59-207.

Note: No change.

§ 59.1-111. Unauthorized use of dealer’s branding-iron, or defacing, etc., marks made by it.—Every timber dealer may have a branding-iron or hammer with which to impress such brand or trade-mark on a log, tree or other timber; and any person who shall use such branding-iron or hammer or have or use one of like form and making the same brand or trade-mark, or who shall intentionally and without authority in writing remove, deface, or obliterate or destroy such brand or trade-mark when once impressed or placed on a log, tree or other timber shall be guilty of a felony, and for each offense shall be confined in the penitentiary not less than one nor more than three years.

Source: § 59-208.

Note: No change.

§ 59.1-112. Fraudulently impressing brand on timber.—If any person shall knowingly or fraudulently impress or place such brand or trade-mark on any log, tree or other timber not his own he shall be guilty of a misdemeanor and fined for each offense not less than ten nor more than one hundred dollars and confined in jail not less than ten nor more than twenty days.

Source: § 59-209.

Note: No change.

§ 59.1-113. Effect of impressing brand on tree, etc.—The placing or impressing such brand or trade-mark on a log, tree or other marketable timber shall be deemed to be a change of ownership and possession.

Source: § 59-210.

Note: No change.

§ 59.1-114. Unlawful cutting down, possessing or converting branded timber.—Any person who shall cut down a tree or shall knowingly have in his possession a log or other timber that has been so branded, without the written consent of its owner, and claiming it as his own, or who shall convert it to his own use or offer to sell same, shall be guilty of a felony and punished by confinement in the penitentiary for not less than one nor more than two years for each offense, unless the defendant in such case show a bona fide adverse claim or color of title to the timber or logs in question obtained before such branding.

Source: § 59-211.

Note: No change.

§ 59.1-115. Sheriff's sale of unbranded timber; recovery by owner; disposition of proceeds.—Every person who shall take, catch, hold or have in his possession any log or other marketable timber, not branded as aforesaid, without the written consent of the owner thereof, shall within ten days after catching, taking up, or getting possession of the same, as aforesaid, report the same in writing to the county clerk of the county in which such person resides, and thirty days after such report is received the sheriff of such county shall sell the same publicly at the court house door on the first day of a circuit court in the county, of which notice shall be given by the sheriff for at least ten days by written or printed notices posted at the front door of such court house or near thereto and at one or more public places in the county. Any person owning such log or timber may, however, recover the same, by satisfying the sheriff that he is entitled to it, or by action of detinue, as provided by law. Such sale shall be made for cash, and the proceeds when collected, after paying the expenses of sale, including a fee of twenty-five cents for each log or piece of timber so sold, shall be paid to the treasurer of the county for the benefit of the public schools of the district in which the party reporting the same shall at that time reside. Any person failing to report to such clerk, as aforesaid, or to turn over the log or other timber to the sheriff, or any sheriff failing or refusing to advertise and sell such log or timber, as aforesaid, shall be guilty of a misdemeanor, and fined not less than ten nor more than one hundred dollars for each offense.

Source: § 59-212.

Note: No change.

§ 59.1-116. Saw-logs floated in Louisa river to be branded.—Any person rafting or floating saw-logs in Louisa river, or any of its tributaries, in the county of Buchanan, shall mark or brand the same, so that the ownership thereof may be identified; and any person who shall catch and securely tie up any such log while floating in such river in such county, below the mouth of Big Prator creek, shall be entitled to demand and receive from the owner fifty cents for each walnut log, and twenty-five cents for each poplar or other kind of log, so caught and secured, upon payment of which sum within ten days thereafter, the owner shall be entitled to such log or logs.

Every person rafting or floating logs in such river shall have his brand or mark recorded in the office of the county clerk, in a book kept by

the clerk for the purpose. The certificate of such clerk shall be prima facie evidence of such brand or mark. The clerk shall be entitled to a fee of twenty-five cents for recording the same and twenty-five cents for a copy thereof.

If any person alter, cut out, or erase the mark or brand on any such logs or timber, he shall forfeit to the owner thereof twenty-five dollars, and shall moreover be deemed guilty of a misdemeanor.

Source: § 59-213.

Note: No change.

CHAPTER 9.

SECOND HAND ARTICLES

Article 1.

Building Fixtures.

§ 59.1-117. Permit required for trading in second-hand building fixtures.—Except as otherwise provided in this chapter, no person, firm or corporation shall offer for sale or sell any second-hand heating or plumbing fixtures or supplies, electric fixtures or wiring, gas fixtures or appliances, water faucets, pipes, locks, bath tubs or other second-hand fixtures of whatever kind or description pertaining to a building, without first obtaining a permit for the sale of the same from the chief of police of the city or town or the sheriff of the county in which such property is offered for sale.

Source: § 59-145.

Note: The words "Except as otherwise provided in this chapter," are added.

§ 59.1-118. Permit issued by chief of police or sheriff; revocation.—The chief of police of a city or the sheriff of a county may issue to persons regularly engaged in the business of collecting second-hand materials for resale a semi-annual or annual permit covering all sales made by such persons. The chief of police or sheriff may refuse to issue a permit, and may revoke any permit issued, to any person convicted of stealing or receiving stolen goods. No charge shall be made for any such permit.

Source: § 59-146.

Note: This section has been amended to eliminate surplus wordage.

§ 59.1-119. Who deemed a dealer.—Every person who purchases second-hand property of the kind mentioned in § 59.1-117 for the purpose of resale or installation on the property of another shall be deemed a dealer within the meaning of the provisions of this article.

Source: § 59-147.

Note: Internal section reference has been conformed.

§ 59.1-120. Books to be kept by dealers.—Every dealer shall keep at his place of business a permanently bound book or books in which shall be legibly written with ink in English at the time of each transaction in the course of his business an accurate account of each purchase and/or sale of every article mentioned in § 59.1-117 sold or purchased by him. Such account shall set forth an accurate description of the goods, articles or things purchased or sold and the name, residence and description of the person selling, delivering or purchasing the same, the license number of the automobile or vehicle in which the goods, article or things were delivered or

received and the permit number, if the goods offered can only be sold under a permit issued by the chief of police of the city or town or the sheriff of the county in which such goods were sold. The description of the person required by this section shall consist of the color, sex, approximate height, and age, any distinguishing feature of such person, and the thumb prints of both hands of such person on the same page on which the entry is made.

Source: § 59-148.

Note: Internal section reference has been conformed.

§ 59.1-121. Reports to be made to chief of police or sheriff.—Every junk dealer and dealers in second-hand personal property, including persons regularly engaged in the business of collecting second-hand materials for resale to junk dealers, shall every day except Sunday before the hour of noon deliver to the chief of police of the city or town on blank forms to be prescribed and furnished by the chief of police of such city or town a legible and accurate description of every article or thing of the kind mentioned in § 59.1-117 received by him during the business day next preceding, the permit number under which the goods were received by the dealer, the license number of any automobile or vehicle in which the goods or things were delivered, together with a description of the person selling or delivering the same, including the color, sex, approximate height and age and any distinguishing features of such person, together with a reference to the volume and number of the page where the original entry required by § 59.1-120 is made. Where goods of the kind mentioned in § 59.1-117 are purchased or received in a county, the same information required by this section shall be furnished to the sheriff of the county in which such goods were bought or received not later than midday of the Saturday following the purchase or receipt of such goods, but the sheriff shall not be required to prepare or furnish blank forms for such reports for use in the county, and the dealer may submit any report which fairly conforms to the requirements of this section.

Source: § 59-149.

Note: Internal section references have been conformed.

§ 59.1-122. Books and places of business open to inspection.—The books required by this article to be kept, and the places of business of all persons engaged in the sale, receiving or purchasing of the articles mentioned in § 59.1-117, shall at all reasonable times be open to the inspection of any police officer, sheriff or deputy of the county, city or town in which such place of business is located.

Source: § 59-150.

Note: Internal section reference has been conformed.

§ 59.1-123. Exemptions from article.—The provisions of this article shall not apply to the sale of second-hand materials mentioned in § 59.1-117 taken from premises occupied by the owner, when sold by such owner on the premises; nor shall the provisions of this article apply to the sale of such articles when purchased from a public utilities corporation at its place of business or a governmental agency.

Source: § 59-151.

Note: Internal section reference has been conformed.

§ 59.1-124. Penalty for violation.—Any violation of this article shall be a misdemeanor. For the first offense the penalty shall be a fine of not

less than fifty dollars nor more than one hundred dollars, and for any second or subsequent offense, a fine of not less than one hundred dollars nor more than five hundred dollars and confinement in jail for a period not exceeding twelve months.

Source: § 59-152.

Note: No change.

Article 2.

Equipment of Railroads and Other Companies.

§ 59.1-125. **When unlawful to buy or accept.**—It shall be unlawful for any person, firm or corporation to barter, purchase, exchange, buy or accept from any person whomsoever, except plumbers, the owner of buildings from which the material is taken, railroad, coal mining, industrial, manufacturing and public utility companies, or the authorized agents of such companies, lawful owners and junk dealers, licensed in this State, any second-hand steel, copper, copper wire, aluminum, aluminum wire, brass, brass bearings or fittings, electric light or gas fixtures, locks or other builders hardware, plumbing fixtures, bell or bell fixtures, lead or brass water pipes or any part of such fixtures or pipes, or any wire, cable, lead, solder, copper, iron or brass used by or belonging to a railroad, telephone, telegraph, coal mining, industrial, manufacturing or public utility company; provided that this section shall not apply to any person, firm or corporation which shall barter, purchase, exchange, buy or accept any second-hand grooved or figure-eight copper trolley wire, bare or insulated heavy stranded copper or aluminum feeder wire, high voltage copper or aluminum transmission wire, or bare or insulated mining machine copper cables, but § 59.1-128 shall be applicable thereto.

Source: § 59-153.

Note: Internal section reference has been conformed.

§ 59.1-126. **Receipt or bill of sale to be taken by buyer.**—Any person buying, at public or private sale, any such second-hand articles as are mentioned in § 59.1-85, except those excepted in said section, shall take from the seller a properly dated written receipt or bill of sale signed by such seller which shall therein state specifically the seller's address, business, social security number, vehicle license number, and place of residence. If a seller of such articles be not personally known to the buyer or if the seller be unable to write his name, such seller shall produce an adult witness personally known to the buyer to identify the seller and also to sign such receipt or bill of sale as witness, the latter also stating therein his full name, occupation and place of residence. Such receipt or bill of sale shall specifically set forth, by accurate description giving the character, kind, quality, weight, length or size, and other detailed description sufficient to accurately identify the same, each of such articles so purchased and shall be retained by the buyer at his place of business for a period of six months after such purchase.

Source: § 59-154.

Note: Internal section reference has been conformed.

§ 59.1-127. **Violation of §§ 59.1-125 or 59.1-126 a misdemeanor.**—Any person violating any of the provisions of §§ 59.1-125 or 59.1-126 shall be guilty of a misdemeanor.

Source: § 59-155.

Note: Internal section reference has been conformed.

§ 59.1-128. When unlawful to buy, exchange, etc., second-hand copper or aluminum wire.—It shall be unlawful for any person, firm or corporation to barter, purchase, exchange, buy or accept from any person whomsoever, except the manufacturer thereof or his authorized agent, railroad, coal mining, industrial, manufacturing and public utility companies, or the authorized agents of such companies, governmental agencies, and licensed junk dealers, licensed scrap metal dealers, licensed electrical contractors and licensed merchants, any second-hand grooved or figure-eight copper trolley wire, bare or insulated heavy stranded copper or aluminum feeder wire, high voltage copper or aluminum transmission wire, or bare or insulated mining machine copper cables.

Source: § 59-155.1.

Note: No change.

§ 59.1-129. Requirements when articles mentioned in § 59.1-128 are bought, exchanged, etc.—Any person, firm or corporation which shall barter, purchase, exchange, buy or accept any of the articles mentioned in § 59.1-128, shall comply with the provisions of § 59.1-126 and shall, in addition, tag each lot of said articles with the name of the seller and the date of receipt and shall retain each such lot in his possession so tagged for thirty days in such manner that its separate identity shall be preserved; provided that the requirements of this section for tagging said articles and retaining them in possession shall not be applicable if the receipt or bill of sale required by § 59.1-126 shall contain an authorization naming the agent who delivers the articles and signed by an officer, or by the proprietor, of the manufacturer, or coal mining, industrial, manufacturing, public utility company, governmental agency, licensed junk dealer, licensed scrap metal dealer, licensed electrical contractor or licensed merchant, giving such authorization.

Source: § 59-155.2.

Note: Internal section references have been conformed.

§ 59.1-130. Punishment for violation of §§ 59.1-128 and 59.1-129.—Any person violating any of the provisions of §§ 59.1-128 or 59.1-129 shall be confined in the penitentiary not less than one year nor more than two years, or in the discretion of the court or the jury trying the case, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for any term not exceeding twelve months, or both. Possession of any such second-hand articles in violation of any of the provisions of said sections shall be prima facie evidence of guilt.

Source: § 59-155.3.

Note: Internal section references have been conformed.

Article 3.

Watches.

§ 59.1-131. When watch deemed second-hand.—A watch shall be deemed to be second-hand if

(1) As a whole or the case thereof or the movement shall have been previously sold to or acquired by any person who bought or acquired the same for his use or the use of another, but not for resale; or

(2) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks shall be erased, defaced, removed, altered or covered.

Source: § 59-156.

Note: No change.

§ 59.1-132. Tag to be affixed to watch.—Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who may sell or exchange, or offer for sale or exchange, expose for sale or exchange, possess with the intent to sell or exchange, or display with the intent to sell or exchange any second-hand watch, shall affix and keep affixed to the same a tag with the words “second-hand” clearly and legibly written or printed thereon, and the tag shall be so placed that the words “second-hand” shall be in plain sight at all times.

Source: § 59-157.

Note: No change.

§ 59.1-133. Invoice to be furnished to purchaser.—Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who may sell a second-hand watch or in any other way pass title thereto shall deliver to the vendee a written invoice bearing the words “second-hand watch” in bold letters, larger than any of the other written matter upon such invoice. Such invoice shall further set forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers (if any), and any other distinguishing numbers or identification marks upon its case and movements. If the serial numbers or other distinguishing numbers or identification marks shall have been erased, defaced, removed, altered or covered, such invoice shall so state. The vendor shall keep on file a duplicate of such invoice for at least five years from the date of the sale thereof, which shall be open to inspection during all business hours by the law enforcement officers of the county or city in which the vendor is engaged in business.

Source: § 59-158.

Note: No change.

§ 59.1-134. Advertisement or display.—Any person, firm, partnership, association or corporation, or any agent or servant thereof, who advertises or displays in any manner a second-hand watch for sale or exchange shall state clearly in such advertisement or display that the watch is a second-hand watch.

Source: § 59-159.

Note: No change.

§ 59.1-135. Penalty for violation.—Any person, firm, partnership, association or corporation, or any agent or servant thereof, who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be punished by a fine not to exceed the sum of five hundred dollars or by imprisonment not to exceed ninety days, or both.

Source: § 59-160.

Note: No change.

§ 59.1-136. Pawnbrokers' auction sales exempted.—The provisions of this article shall not apply to pawnbrokers' auction sales of unredeemed pledges when public notice of the fact that watches are rebuilt or are second-hand is given prior to the sale.

Source: § 59-161.

Note: No change.

CHAPTER 10.

EXPLOSIVES.

§ 59.1-137. **Definition.**—Whenever used in this chapter:

“Explosives” means commercial explosives which are classified as of June 27, 1960, in the Interstate Commerce Commission’s regulations for transportation of explosives and other dangerous articles as Class A, Class B, or Class C explosives, and include but are not limited to dynamite, black blasting powder, pellet powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord and igniters.

Source: § 59-222.

Note: No change.

§ 59.1-138. **Record of sales required; signing by purchasers; sales to persons under twenty-one prohibited.**—(a) Any person selling any explosives covered by this chapter shall keep a record of all such explosives sold, showing the kind and quantity sold, the name and address of the purchaser, and the date of each sale. The person selling such explosives shall also require any person purchasing such explosives to sign such record at the time of such purchase.

(b) No person shall sell, deliver, give away, or otherwise dispose of any explosives to any individual under twenty-one years of age, whether such individual is acting for himself, herself, or for any other person.

Source: § 59-223.

Note: No change.

§ 59.1-139. **Persons possessing explosives to give notice of theft.**—Any person having in his possession any explosives covered by this chapter shall immediately notify the sheriff of the county or the police officials of the city in which any such explosives are being stored or used in the event that any such explosives are stolen.

Source: § 59-224.

Note: No change.

§ 59.1-140. **Effect of chapter upon municipal regulation.**—Nothing contained in this chapter shall:

Affect any existing ordinance, rule or regulation of any city or municipality in this State that is not less restrictive than this chapter; or affect, modify or limit the power of such cities or municipalities to make ordinances, rules or regulations not less restrictive than this chapter, governing the storage, possession, sale and use of explosives within their respective corporate limits.

Source: § 59-225.

Note: No change.

§ 59.1-141. **Penalty.**—Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, be punished accordingly.

Source: § 59-226.

Note: No change.

CHAPTER 11.
FIREWORKS.

§ 59.1-142. When manufacture, transportation, sale, etc., of fireworks unlawful.—Except as otherwise provided in this chapter, it shall be unlawful for any person, firm or corporation to transport, manufacture, store, sell, offer for sale, expose for sale, or to buy, use, ignite or explode any firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, nitroglycerine, phosphorus or any other explosive or inflammable compound or substance, and intended, or commonly known, as fireworks.

Source: § 59-214.

Note: No change.

§ 59.1-143. Seizure and destruction of certain fireworks.—Any law enforcement officer arresting any person for a violation of this chapter shall seize any article mentioned in § 59.1-142 in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

Source: § 59-214.1.

Note: Internal section reference has been conformed.

§ 59.1-144. Permits for display of fireworks; sales for use thereunder.—The governing bodies of the several counties, cities and towns shall have the power to provide for the issuance of permits, upon application in writing, for the display of fireworks by fair associations, amusement parks, or by any organization or group of individuals, under such terms and conditions as they may prescribe. After such permit has been issued sales of fireworks may be made for use under such permit, and the association, organization or group to which it is issued may make use of such fireworks under the terms and conditions of such permit.

Source: § 59-215.

Note: No change.

§ 59.1-145. Penalty for violation.—Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, be punished by confinement in jail not to exceed twelve months, or by a fine not exceeding one thousand dollars, or both such fine and imprisonment.

Source: § 59-216.

Note: No change.

§ 59.1-146. Exemptions generally.—This chapter shall have no application to any officer or member of the armed forces of this State, or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces; nor shall it be applicable to the sale or use of materials or equipment, otherwise prohibited by this chapter, when such material or equipment is used or to be used by any person for signalling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

Source: § 59-217.

Note: No change.

§ 59.1-147. Certain fireworks exploded on private property.—This chapter shall not apply to sparklers, fountains, Pharoah's serpents, caps for pistols, nor shall it apply to pinwheels commonly known as whirligigs or spinning jennies, when used, ignited or exploded on private property with the consent of the owner of such property.

Source: § 59-218.

Note: No change.

§ 59.1-148. Local ordinances not affected.—Nothing contained in this chapter shall apply to any ordinance prohibiting the sale, storage, use, possession or manufacture of fireworks heretofore or hereafter adopted by any county, city or town.

Source: § 59-219.

Note: No change.

CHAPTER 12.

GASOLINE AND LUBRICATING OILS

§ 59.1-149. Definitions.—As used in this chapter:

(1) "Gasoline" shall be construed to include naphtha, benzine and other like liquids and fluids derived from petroleum or other sources and used, or intended to be used, for power purposes, except kerosene.

(2) "Lubricating oil" shall be construed to mean lubricating oils used in internal combustion engines.

(3) "Commissioner" shall mean the Commissioner of Agriculture and Commerce.

Note: In paragraph numbered (3), "Commerce" is substituted for "Immigration."

§ 59.1-150. Gasoline subject to inspection and test.—All gasoline used, or intended to be used, or sold or offered for sale or distribution in this State, for power purposes, shall be subject to inspection and test for the purpose of preventing adulteration, deception or fraud in the sale thereof.

Source: § 59-42.

Note: No change.

§ 59.1-151. Statements to be filed by manufacturers, wholesalers and jobbers.—All manufacturers, wholesalers, and jobbers, before selling or offering for sale in this State any gasoline for the purposes above defined, shall file with the Commissioner a statement that they desire to do business in this State, and furnish the name or brand of the gasoline which they desire to sell, with the name and address of the manufacturer, producer, or refiner, and that the gasoline will comply with the requirements of this chapter.

Source: § 59-43.

Note: No change.

§ 59.1-152. Collection and analysis of samples.—The Commissioner shall have power at all times and at all places to have collected samples of any gasoline offered for sale in this State and have the same analyzed.

Source: § 59-44.

Note: No change.

§ 59.1-153. Methods of making inspection.—In making any inspections of gasoline under this chapter, the Commissioner shall follow the “properties and tests” for motor gasoline of the Federal Specification Board, as the same now are or may be hereafter amended, and shall make such inspection in accordance with the methods prescribed and established by such Board. For cause after hearing, such specifications can be amended by the Board of Agriculture and Commerce, provided that before such changes are effective ninety days’ notice shall be given in writing to all companies reporting the sale of gasoline in this State.

Source: § 59-45.

Note: “Commerce” is substituted for “Immigration.”

§ 59.1-154. Inspection under supervision of Commissioner.—Inspection of such gasoline shall be under the direction of the Commissioner.

Source: § 59-46.

Note: No change.

§ 59.1-155. Prohibiting sale of defective gasoline.—The Commissioner may prohibit the sale of gasoline that does not meet the specifications as provided in this chapter.

Source: § 59-47.

Note: No change.

§ 59.1-156. Rules and regulations.—The Board of Agriculture and Commerce may make all necessary rules and regulations for the inspection of gasoline and lubricating oil and the enforcement of this chapter. It shall be the duty of the Commissioner to publish at least annually in a bulletin of the Department of Agriculture and Commerce the rules and regulations established for the purpose of carrying into effect the provisions of this chapter.

Source: § 59-48.

Note: The words “Commissioner, with the approval of the” have been deleted from the beginning of the first sentence to conform with practice. “Commerce” has been substituted for “Immigration” in two places.

§ 59.1-157. Complaints to Commissioner as to quality of gasoline.—Whenever a complaint is made to the Commissioner in regard to the quality of any gasoline sold in this State, he shall cause a sample of the gasoline complained of to be procured and shall have the same thoroughly analyzed and tested to determine whether or not it conforms to the properties and tests of the Federal Specifications Board as they may be amended by the Board of Agriculture and Commerce under the provisions of this chapter, or is as represented by the dealer. If the analysis or other tests show that the gasoline is not as represented or that it does not meet the properties and tests of the Federal Specification Board as may be amended as herein provided by the Board of Agriculture and Commerce, its sale shall be forbidden, and a report of the result or results of such analysis or tests shall be sent to the party making the complaint, to the dealers offering such gasoline or fuel oil for sale, and to the manufacturer thereof.

Source: § 59-50.

Note: In the first sentence the words “Commissioner with the approval of the” have been deleted. “Commerce” has been substituted for “Immigration.”

§ 59.1-158. Requirements and regulations as to delivery of gasoline.—Every person delivering at wholesale or retail gasoline in this State shall

deliver the same to the purchaser only in tanks, barrels, casks, cans or other containers having the word "gasoline", in English, plainly stenciled or labeled thereon, to meet the requirements and regulations adopted by the Board of Agriculture and Commerce under this chapter, except that where gasoline is delivered in bulk from tank wagons the cans used in such deliveries may be painted red and the word "gasoline" need not be stenciled thereon, and except, further, that where deliveries of gasoline are made in tank wagons having more than one compartment it shall only be necessary that the spigot on the pipe leading from the gasoline compartments shall have attached thereto a tag with the word "gas" in English plainly stenciled thereon. Such dealer shall not deliver gasoline in any barrels, casks, cans, tank wagons, or other containers, which have not been stenciled, painted or labeled as hereinbefore provided.

Every person purchasing gasoline for sale shall procure and keep the same only in tanks, barrels, casks, cans or other containers stenciled or labeled as hereinbefore provided.

Nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor vehicle.

When gasoline is sold in bottles, cans or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "unsafe when exposed to heat or fire".

Source: § 59-51.

Note: In the first sentence the words "Commissioner with the approval of the" have been deleted. "Commerce" has been substituted for "Immigration."

§ 59.1-159. Test for misbranding or adulteration.—The Commissioner may inspect, sample, analyze and test liquid fuels, lubricating oils, and similar products for the purpose of determining whether such products are misbranded and/or adulterated within the meaning of the law intended to prevent fraud and misrepresentation in the sale of such liquid fuels, lubricating oils and similar products, and to prevent adulteration of any of such products.

Source: § 59-52.

Note: No change.

§ 59.1-160. Submission of substitutes to Commissioner; labels.—All materials, fluids or substances offered or exposed for sale purporting to be substitutes for motor fuel or improvers thereof shall be submitted to the Commissioner for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label.

Source: § 59-53.

Note: No change.

§ 59.1-161. Duties of inspectors.—The inspectors in the employ of the Department of Agriculture and Commerce shall, in addition to the duties now imposed, make inspections of gasoline as herein required under the supervision of the Commissioner. Such inspectors shall, as directed, collect samples of gasoline offered for sale in this State and send the same to the Commissioner for examination. Additional inspectors may be employed by the Commissioner to inspect filling stations for the purpose of carrying out the provisions of this chapter and to perform such other duties as the Commissioner may direct.

Source: § 59-54.

Note: "Commerce" has been substituted for "Immigration."

§ 59.1-162. Co-operation by State agencies.—The State Highway Commission and the Division of Motor Vehicles are authorized to cooperate, as directed by the Governor, with the Commissioner of Agriculture and Commerce in carrying out the provisions of this chapter.

Source: § 59-55.

Note: "Commerce" has been substituted for "Immigration."

§ 59.1-163. Penalty for violation.—Any person, firm or corporation selling or offering for sale gasoline or lubricating oil which does not come up to the standard provided in this chapter, or violating any of the provisions of the chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars and not more than one thousand dollars. Any dealer in gasoline who receives gasoline meeting the requirements of this chapter and who thereafter adulterates any such gasoline or mixes it with inferior gasoline, so that the resulting product does not meet the requirements of this chapter, shall be guilty of a misdemeanor and punished accordingly.

Source: § 59-56.

Note: "Punished" is substituted for "punishable."

§ 59.1-164. Duty of Commonwealth's attorney.—It shall be the duty of the Commonwealth's attorney of the respective cities and counties to prosecute all violations of the provisions of this chapter, when certified to him by the Commissioner.

Source: § 59-57.

Note: No change.

§ 59.1-165. Chemical analysis as evidence.—A copy of the analysis of gasoline or lubricating oils, made by a chemist of the Department of Agriculture and Commerce, when certified to by him, shall be admitted as evidence in any court of this State in the trial of any proceeding involving the misbranding or adulteration of such gasoline or lubricating oils.

Source: § 59-58.

Note: "Commerce" has been substituted for "Immigration."

§ 59.1-166. Enforcement by Commissioner.—It shall be the duty of the Commissioner, with the approval of the Board of Agriculture and Commerce, to enforce the provisions of this chapter.

Source: § 59-59.

Note: "Commerce" has been substituted for "Immigration".

§ 59.1-167. Conflicting local laws and ordinances prohibited.—Cities, towns, counties and other political subdivisions of this State are prohibited from passing any laws or ordinances relating to the inspection and testing of the petroleum products named in § 59.1-150 inconsistent with the provisions of this chapter.

Source: § 59-60.

Note: Internal section reference has been conformed.

CHAPTER 13.

BOILERS AND PRESSURE VESSELS.

§ 59.1-168. Definitions.—As used in this chapter, the following terms shall have the meaning set forth in this paragraph unless the context requires a different meaning:

a. *Pressure vessel*—every high-pressure boiler, low-pressure boiler, miniature boiler, and unfired pressure vessel.

b. *Boiler*—a pressure vessel and associated contiguous components in which a fluid is vaporized by the application of heat resulting from electricity, nuclear energy, or the combustion of materials. Superheaters, economizers and other pressure parts directly connected to the boiler are included, reheaters are included.

c. *High-pressure boiler*—a boiler operating at more than fifteen pounds pressure.

d. *Low-pressure boiler*—a boiler used exclusively for low pressure steam heating, hot water heating and hot water supply and including:

(1) All steam boilers for operation at not more than fifteen pounds pressure;

(2) Hot water heating and hot water supply boilers for operation at not more than one hundred sixty pounds pressure and not more than two hundred fifty degrees Fahrenheit temperature.

e. *Miniature boiler*—a boiler which does not exceed any of the following limits:

(1) Sixteen inches inside diameter of shell;

(2) Five-cubic-foot gross volume, exclusive of casting and insu-

(3) Twenty square feet of water heating surface;

(4) Operation at one hundred pounds pressure.

f. *Unfired pressure vessel*—a vessel in which pressure is obtained from an external source or from an indirect application of heat.

g. *Pressure*—gauge pressure or the pressure above the atmospheric expressed in pounds per square inch.

Source: § 59-227.

Note: No change.

§ 59.1-169. State Corporation Commission authorized to establish standards and adopt regulations.—The State Corporation Commission is authorized from time to time to establish official standards and adopt regulations dealing with the manufacture within the State for use in the State, the sale or other disposition for use in the State, the installation within the State, of boilers and pressure vessels. All such standards and regulations shall be designed for the protection of human life and property from unsafe or dangerous manufacture, sale or other disposition, or installation of any such boiler or pressure vessel.

Source: § 59-228.

Note: No change.

§ 59.1-170. Standards not applicable to prior installations.—The standards adopted shall not apply to boilers and pressure vessels purchased, installed, or placed in operation prior to the date of adoption of the standards.

Source: § 59-229.

Note: No change.

§ 59.1-171. **Exceptions.**—This chapter shall not apply to:

- a. Boilers or unfired pressure vessels under the jurisdiction and inspection of the federal government or any agency thereof;
- b. Boilers and unfired pressure vessels used on farms solely for agricultural purposes;
- c. Boilers and fired or unfired pressure vessels used in private residences or apartment houses of less than four apartments;
- d. Boilers of railroad companies, ships, boats or other water-borne vessels;
- e. Hot water supply boilers and unfired pressure vessels used as hot water supply storage tanks heated by steam or any other indirect means when the following limitations are not exceeded:
 - (1) A heat output of two hundred thousand B.T.U. per hour;
 - (2) A water temperature of two hundred degrees Fahrenheit;
 - (3) A nominal water-containing capacity of one hundred twenty gallons.
- f. Unfired pressure vessels containing air only located on vehicles or vessels used for transporting passengers or freight;
- g. Unfired pressure vessels containing air only installed on the right of way of railroads and used directly in the operation of trains;
- h. Unfired pressure vessels with a nominal water-containing capacity of one hundred twenty gallons or less for containing water under pressure, including those containing air, the compression of which serves only as a cushion;
- i. Unfired pressure vessels containing air only, providing the volume does not exceed eight cubic feet or the operating pressure is not greater than one hundred seventy-five pounds;
- j. Unfired pressure vessels having an operating pressure not exceeding fifteen pounds with no limitation on size;
- k. Unfired pressure vessels having an inside diameter not exceeding six inches with no limitation on pressure;
- l. Cylinders and containers meeting the requirements of and used in accordance with the regulations of the Interstate Commerce Commission;
- m. Boilers and pressure vessels used in development or experiment by any organization or business primarily engaged in research and experimentation;
- n. Public service companies operating under the rules and regulations of the State Corporation Commission;
- o. Unfired pressure vessels used as containers for liquefied petroleum gases and subject to the regulation of the State Corporation Commission under chapter 116 of the Acts of 1950;
- p. Any manufacturing establishment engaged in the manufacture of petroleum, chemicals, chemical products or derivatives, or wood pulp, or the further processing of such petroleum, chemicals, chemical products or derivatives, or wood pulp;
- q. Boilers and pressure vessels covered by liability insurance under a policy written by an insurance carrier authorized by the State Corporation

Commission to issue policies of insurance covering such matters in Virginia.

Source: § 59-230.

Note: No change.

§ 59.1-172. Effect upon local ordinances and regulations.—Nothing in this chapter shall be construed as repealing any valid local ordinance or regulation now in effect adopted pursuant to general law or charter provision; provided, however, that if any such ordinance or regulation is less strict than any standard or regulation promulgated or adopted by the State Corporation Commission then such ordinance or regulation shall be superseded by the applicable standard or regulation of the State Corporation Commission.

Source: § 59-231.

Note: No change.

§ 59.1-173. Enforcement of regulations by local authorities.—Regulations adopted under this chapter may be enforced by local authorities.

Source: § 59-232.

Note: No change.

§ 59.1-174. Hearing prior to adoption of standards by State Corporation Commission.—Before initially adopting any standards or regulations hereunder, the State Corporation Commission shall hold a public hearing on such proposed standards or regulations.

Source: § 59-233.

Note: No change.

§ 59.1-175. Publication of standards and regulations; effective date of regulations.—The standards and regulations adopted by the Commission under this chapter shall be published by the Commission in a volume separate from any of its other reports. The standards and regulations thus adopted and printed shall become effective thirty days after a printed copy thereof is filed with the clerk of the Commission and shall remain effective as long as a copy remains on file with such clerk.

Source: § 59-234.

Note: No change.

§ 59.1-176. Violation of regulations constitutes misdemeanor.—Whenever any regulation adopted pursuant to this chapter becomes effective, any person who violates any provision thereof shall be guilty of a misdemeanor.

Source: § 59-235.

Note: No change.

CHAPTER 14.

VIRGINIA PAINT LAW.

§ 59.1-177. Short title; purpose.—The short title of this chapter is the Virginia Paint Law.

It is the purpose of this law to prevent deception in the sale of paint, paint oil and turpentine; and to require true labels and labeling for the same.

Source: § 59-61.1.

Note: No change.

§ 59.1-178. **Definitions.**—For the purpose of this chapter:

(1) The term “paint” means any substance or mixture or substances, liquid, powder or paste, intended for use as a protective or decorative coating on buildings, fences or structures. It shall not include artist colors, waxes, wood fillers, polishes, stains, plaster, stucco and water-proofing compounds.

(2) The term “paint oil” means any oil, or mixture of oils and other liquids, used or intended for use in paint.

(3) The term “turpentine” means gum spirits of turpentine, steam distilled wood turpentine, sulfate wood turpentine and destructively distilled wood turpentine in accordance with specifications approved by the Board of Agriculture and Commerce.

(4) The term “ingredient statement” means a statement of the chemical name and percentage by weight of each ingredient, provided that whenever it is not possible or practical to use the chemical name, the Commissioner may approve the use of the other names or terms in the ingredient statement.

(5) The term “person” means any individual, partnership, association, corporation, contractor, or organized group of individuals whether incorporated or not.

(6) The term “Board of Agriculture” or “Board” means the Virginia Board of Agriculture and Commerce.

(7) The term “Department” means the Department of Agriculture and Commerce.

(8) The term “Commissioner” means the Commissioner of Agriculture and Commerce.

(9) The term “registrant” means the person registering pursuant to the provision of this chapter.

(10) The term “label” means the written, printed or graphic matter on, or attached to, the immediate container and the wrapper of the retail package, if any there be, of the paint, paint oil or turpentine.

(11) The term “labeling” means all labels and other written, printed or graphic matter—

(a) Upon the paint, paint oil or turpentine or any of its containers or wrappers;

(b) Accompanying the paint, paint oil or turpentine at any time; or

(c) Pertaining whatsoever to the paint, paint oil or turpentine.

(12) The term “misbranded” shall apply—

(a) To any paint, paint oil or turpentine—

(i) If it is an imitation of or offered for sale under the name of another article;

(ii) If the package or container or its labeling shall bear any statement, design or device regarding the ingredients or substances contained therein, which statement, design or device shall be false or misleading in any particular;

(iii) If its labeling bears any reference to registration under this chapter; or

(iv) If any word, statement, or other information required by or under the authority of this chapter to appear on the label is not conspicuously placed thereon clearly and distinctly and in the English language.

(b) To any paint—

(i) If the label does not specify the purpose for which the product is intended; or

(ii) If the label does not contain adequate directions for use.

Source: § 59-61.2.

Note: In paragraph numbered (3) “and Commerce” has been added. In paragraphs numbered (6), (7) and (8) “Commerce” has been substituted for “Immigration.”

§ 59.1-179. Prohibited acts.—It shall be unlawful for any person to distribute, sell or offer for sale within this State or, except with authority of the Commissioner, to deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any paint which is not registered pursuant to the provisions of § 59.1-66 of the Code of Virginia, or any paint, if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with this registration; or if the composition of a paint differs from its composition as represented in connection with its registration.

(2) Any paint unless it is in the registrant’s or the manufacturer’s unbroken immediate container and there is affixed to such container, and to the wrapper of the retail package, if there be one, a label bearing

(a) The name and address of the manufacturer, registrant, or person for whom manufactured;

(b) The name, brand, or trademark under which said article is sold;

(c) The net measure or weight of the content subject; and

(d) An ingredient statement.

(3) Any paint, paint oil, or turpentine which is misbranded.

(4) Any paint oil or turpentine unless the container in which it is sold or from which the paint oil or turpentine is dispensed has affixed thereto a label bearing

(a) The name and address of the manufacturer or person for whom manufactured;

(b) The name or brand under which said article is sold;

(c) The net measure or weight of the content subject; and

(d) An ingredient statement.

Source: § 59-61.3.

Note: Internal section reference has been conformed.

§ 59.1-180. Further prohibited acts.—It shall be unlawful:

(1) For any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or the rules

and regulations promulgated hereunder, or to add any substances to, or take any substances from a paint, paint oil or turpentine in a manner that may defeat the purpose of this chapter;

(2) For any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of paint, paint oil or turpentine to which such request relates, to furnish to or permit any persons designated by the Commissioner to have access to and copy such records of business transactions as may be essential in carrying out the purposes of this chapter;

(3) For any person to oppose or interfere in any way with the Commissioner or his duly authorized agents in carrying out the duties imposed by this chapter; and

(4) For any person charged with the enforcement of this chapter to be directly or indirectly connected with or financially interested in the sale, manufacture or distribution for sale of any paint, paint oil or turpentine.

Source: § 59-61.4.

Note: No change.

§ 59.1-181. Injunction.—In addition to the remedies herein provided, the Commissioner of Agriculture and Commerce is hereby authorized to apply to an appropriate court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provisions of §§ 59.1-179 or 59.1-180 of this chapter irrespective of whether or not there exists an adequate remedy at law.

Source: § 59-61.5.

Note: "and Commerce" has been added. Internal section references have been conformed.

§ 59.1-182. Registration.—The name and address of the manufacturer whose name appears on the label, or the name and address of the person whose name appears on the label, if other than the manufacturer, of every paint which is distributed, sold or offered for sale within this State, or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered annually with the Commissioner upon forms furnished by the Commissioner. All registrations shall expire on the thirtieth day of June following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration or until otherwise terminated.

The registrant shall file with the Commissioner:

(1) A statement including the name and address of the registrant, the name and address of the person whose name will appear on the label, if other than the registrant, and the name of the paint;

(2) A complete copy of the label accompanying the paint;

(3) In the case of renewal of registration, a statement shall be required only with respect to information which is different than that furnished when the paint was registered or last reregistered.

The Commissioner is authorized and empowered to refuse to register, or to cancel the registration of, any paint upon satisfactory proof that

the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder; provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner.

Source: § 59-61.6.

Note: No change.

§ 59.1-183. Determination; rules and regulations; uniformity.—The Commissioner is authorized: (1) To effect the collection and examination of samples of paint, paint oil or turpentine to determine compliance with the requirements of this chapter; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain paint, paint oil or turpentine, for the purposes of inspection or sampling and to procure samples for analysis or examination from any lot, package or parcel of paint, paint oil or turpentine; and

(2) To publish from time to time, in such forms as he may deem proper, information concerning the sale of paint, paint oil or turpentine, together with such data on their production and use as he may consider advisable, and reports of the results of the analyses based on official samples of paint, paint oil or turpentine sold within the State.

The Board of Agriculture and Commerce is authorized to prescribe, after public hearing following due public notice, such rules and regulations relating to the sale and distribution of paint, paint oil or turpentine as it may find necessary and proper in its judgment to best carry out the purpose of this chapter.

In order to avoid confusion resulting from diverse requirements, particularly as to labeling of paint, paint oil or turpentine, and to avoid increased costs to the people of the State due to the necessity of complying with diverse requirements in the manufacture and sale of paint, paint oil or turpentine, the Board of Agriculture and Commerce and the Commissioner are authorized and empowered to co-operate with and enter into agreement with, any other agency of this State or other states or agencies of the United States, and cooperate with any agency for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

Source: § 59-61.7.

Note: "Commerce" has been substituted for "Immigration".

§ 59.1-184. Violations.—If it shall appear from the examination or evidence that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the Commissioner may cause notice of such violations to be given to the registrant, distributor, or possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Board of Agriculture and Commerce. If it appears after such hearing that there has been a sufficient number of violations of this chapter or the rules and regulations issued thereunder, the Commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such analyst or officer. It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause

proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

Nothing in this section shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: § 59-61.8.

Note: "Commerce" has been substituted for "Immigration".

§ 59.1-185. Exemptions.—The penalties provided for violations of

(1) Any carrier while lawfully engaged in transporting a paint, paint oil or turpentine within this State, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transaction in and movements of the articles;

(2) Public officials of this State and the Federal Government engaged in the performance of their official duties;

(3) Any person who shall sell paint through agreement to any manufacturer, industrial plant, or agents of the Federal Government, State of Virginia or subdivisions thereof or public service corporation for direct use; provided,

(a) That evidence concerning such sale is furnished the Commissioner upon request and,

(b) That the paint is not exposed for sale, offered for sale or sold to the general public;

(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the paint in the same unbroken package, to the effect that the paint was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this chapter, designating this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this chapter.

Source: § 59-61.9.

Note: Internal section reference has been conformed.

§ 59.1-186. "Stop-sale" orders.—It shall be the duty of the Commissioner to issue and enforce a written or printed "stop-sale, use or removal" order to the owner or custodian of any lot of paint, paint oil or turpentine and to hold at a designated place when the Commissioner finds said paint, paint oil or turpentine is being offered or exposed for sale in violation of any of the provisions of this chapter until this chapter has been complied with and said paint, paint oil or turpentine is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority; provided that the owner or custodian of such paint, paint oil or turpentine shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the said paint, paint oil or turpentine is found, praying for a judgment as to the justification of said order, and for the dis-

charge of such paint, paint oil or turpentine from the order prohibiting the sale in accordance with the findings of the court; and provided further that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The Commissioner shall release the paint, paint oil or turpentine so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

Source: § 59-61.10.

Note: No change.

§ 59.1-187. Seizure, condemnation, and sale.—Any lot of paint, paint oil or turpentine not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said paint, paint oil or turpentine is located. In the event the court finds the said paint, paint oil or turpentine to be in violation of this chapter and orders the condemnation of said paint, paint oil or turpentine, it shall be disposed of in any manner consistent with the quality of the paint, paint oil or turpentine and the laws of the State; provided, that in no instance shall the disposition of said paint, paint oil or turpentine be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said paint, paint oil or turpentine or for permission to process or relabel said product to bring it into compliance with this chapter.

Source: § 59-61.11.

Note: No change.

§ 59.1-188. Delegation of duties.—All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture and Commerce as the Commissioner may from time to time designate for said purpose.

Source: § 59-61.12.

Note: "Commerce" has been substituted for "Immigration."

CHAPTER 15.

STORAGE BATTERIES.

§ 59.1-189. Labels and stamps required.—No storage batteries intended for use in connection in any manner with the operation of any machine, motor, radio or any mechanical device or in connection with the production of any artificial light shall be sold or offered for sale in this State unless there is permanently affixed to such batteries a label or stamp showing the name and address of the manufacturer, date on which the manufacture of such battery was completed, the size of the container and whether the container is made of rubber or a composition, the number and thickness of plates in each cell, the name of the material used as a filler for the grids in the plate, the kind of woods, or other materials used as separators between the plates.

Source: § 59-162.

Note: No change.

§ 59.1-190. "Rebuilt" batteries.—To every storage battery which has been rebuilt and offered for sale in this State, there shall be, in addition to the label or stamp required by the preceding section, permanently

affixed to the container and above label or stamp required by the preceding section, the word "rebuilt", together with the name and address of the person, firm or corporation rebuilding such battery.

Source: § 59-163.

Note: No change.

§ 59.1-191. Penalty for violation.—Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than two hundred and fifty dollars, or punished by imprisonment in jail for not more than six months or by both fine and imprisonment.

Source: § 59-164.

Note: No change.

CHAPTER 16.

PURCHASE OF LIVESTOCK FROM UNKNOWN PERSON.

§ 59.1-192. "Person" defined.—As used in this chapter the term "person" shall mean any individual, partnership, corporation, or other firm or association.

Source: § 59-165.

Note: No change.

§ 59.1-193. Record to be kept by purchaser of livestock delivered by motor vehicle.—It shall be unlawful for any dealer in or slaughterer of livestock to purchase any cattle, sheep, swine or other livestock from any person who is not personally known by the purchaser and who delivers such livestock to the purchaser by means of a motor truck or other motor vehicle, unless such purchaser shall first record the name and address of the person from whom such purchase is made, the date of the purchase, the license plate numbers of such truck or vehicle, the State where the same is registered, and a general description of the livestock purchased, including the kind purchased, whether cattle, sheep, swine or other livestock, the number purchased and the approximate weight of the livestock in each lot purchased.

Source: § 59-166.

Note: No change.

§ 59.1-194. Record available for inspection.—The purchaser shall keep such record for a period of at least six months from the date of purchase. Every such purchaser shall also keep such record available for inspection by the law enforcement officers of the State and the counties, cities and towns thereof, and shall exhibit it to such officers upon their lawful demand.

Source: § 59-167.

Note: No change.

§ 59.1-195. Penalty for violation.—Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished, for each offense, by a fine of not less than ten nor more than one hundred dollars.

Source: § 59-168.

Note: No change.

4. That the Code of Virginia be amended by adding in Title 15.1 thereof sections numbered 15.1-523, 15.1-524 and 15.1-525, as follows:

§ 15.1-523. Authority to tax and regulate dealers.—The governing body of any county may impose a license tax of not more than twenty-five dollars on persons engaged in the business of selling pistols and revolvers to the public.

Source: § 59-141.

Note: Transferred for better context.

§ 15.1-524. Reports of sales.—The governing body of any county may require sellers of pistols and revolvers to furnish the clerk of the circuit court of the county, within ten days after sale of any such weapon, with the name and address of the purchaser, the date of purchase, and the number, make and calibre of the weapon sold. The clerk shall keep a record of the reports.

Source § 59-142.

Note: Transferred for better context.

§ 15.1-525. In certain counties.—Chapter 297 of the Acts of 1944, approved March 29, 1944, requiring permits to sell or purchase pistols or revolvers in any county having a density of population of more than one thousand a square mile, is continued in effect.

Source: § 59-144.

Note: No change.

5. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

6. The repeal of Title 59 effective as of October 1, 1968, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 59 of the Code of Virginia nor the enactment of Title 59.1 shall apply to offenses committed prior to October 1, 1968, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October 1, 1968, if any of the essential elements of the offense occurred prior thereto.

7. Whenever in Title 59.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 59, as such title existed prior to October 1, 1968, are transferred in the same or in modified form to a new section, article or chapter of Title 59.1, and whenever any such former section, article or chapter of Title 59 is given a new number in Title 59.1, all references to any such former section, article or chapter of Title 59 appearing elsewhere in the Code of Virginia than in Title 59.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

8. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

9. This act shall become effective on October 1, 1968.

