REPORT OF THE

VIRGINIA CODE COMMISSION

ON

REVISION OF TITLE 32 OF THE CODE OF VIRGINIA

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 8

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979

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*Stuart H. Dunn, Chief Deputy Attorney General, was designated by Attorney General J. Marshall Coleman to represent him at the meetings of the Virginia Code Commision.

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Report of the

Virginia Code Commission

On

Revision of Title 32 of the Code of Virginia

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

December, 1978

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

In 1974, the General Assembly, in House Joint Resolution No. 145, directed the Virginia Code Commission to study Title 32 and to report its findings in the form of a recodification of that title.

That resolution was requested by the State Health Department, which felt a need for an overall review and redraft of the statutes under which it operates, many of which are antiquated or not reflective of present public health requirements and methodology. Particularly needed was a review of the statutes governing the Department's relationship with local health departments, disease prevention and control, and environmental health services. The Commission and its staff for the project have met repeatedly with Health Department administrators and with assistant attorneys general who represent the Health Department in order to review drafts of proposed Title 32.1.

Although much of the material in the drafts which follow involves mere modernization, consolidation of sections and language within sections, and deletion of obsolete or unnecessary provisions, there are included a number of proposed changes which should be considered substantive. In a number of instances, sections were entirely rewritten and numerous minor substantive changes are proposed therein.

The revised chapters have been regrouped into an organization which, along with proposed new material, should be more easily usable than is present Title 32 and which will facilitiate future amendments.

In its revision, the Commission has generally adhered to a policy of deleting sections setting out "legislative intent" and "legislative findings." This has been done in order to streamline and condense the title and in no way indicates a desire on the part of the Commission to suggest a substantive change thereby.

In addition to holding numerous working sessions with the staff and with Health Department representatives, the Commission held a widely-publicized public hearing in October, 1978, at which time a number of speakers presented their views and comments regarding the proposed drafts. These responses were considered and discussed by the Commission and, in a number of instances, adjustments to the drafts were made.

Following in this report appear tables which indicate where in proposed Title 32.1 the successor section to a given Title 32 section would appear. A table of contents of the proposed new title also follows. Reviser's notes under each section refer to the Title 32 section from which some or all of the draft Title 32.1 section was taken. The Reviser's Notes also help to point out major changes proposed in the drafts.

This report includes not only the text of proposed Title 32.1 but also drafts of several companion bills which would accomplish additional changes sought by the Department.

The Virginia Code Commission recommends that the General Assembly enact the attached bills in its 1979 session.

Respectfully submitted,

A. L. Philpott, Chairman

J. Harry Michael, Jr., Vice Chairman

John A. Banks, Jr., Secretary

Russell M. Carneal

Stuart H. Dunn*

Frederick T. Gray

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TITLE 32.1.

HEALTH.

CHAPTER 1.

ADMINISTRATION GENERALLY.

CHAPTER 2.

DISEASE PREVENTION AND CONTROL.

CHAPTER 3.

MEDICAL CARE SERVICES.

CHAPTER 4.

HEALTH CARE PLANNING.

CHAPTER 5.

REGULATION OF MEDICAL CARE

FACILITIES AND SERVICES.

CHAPTER 6.

ENVIRONMENTAL HEALTH SERVICES.

CHAPTER 7.

VITAL RECORDS AND HEALTH STATISTICS.

CHAPTER 8.

POSTMORTEM EXAMINATIONS AND SERVICES.

COMPANION BILLS

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SECTION NOT IN TITLE 32 PROPOSED TO BE TRANSFERRED

§ 54-276.9 transferred to § 8.01-225

PROPOSED NEW SECTIONS NOT IN TITLE 32.1

§ 18.2-186.1
§ 28.1-178.1
§ 28.1-178.2
§ 28.1-178.3
§ 28.1-178.4
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SECTIONS NOT IN TITLE 32 PROPOSED TO BE REPEALED

§ 28.1-175
§ 28.1-176
§ 28.1 177
§ 28.1-178
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(please see proposed §§ 28.1 178.1 et seq., herein)

OTHER SECTIONS PROPOSED TO BE AMENDED

§ 15.1-53
§ 15.1-611
§ 15.1-646
§ 15.1-282
§ 18.2-267
§ 18.2-268
§ 19.2-393
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§ 20-6
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FROM OTHER TITLES TO TITLE 32.1

§ 54-524.109:9
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A BILL to amend the Code of Virginia by adding a new title numbered 32.1, containing chapters numbered 1 through 8, and sections numbered 32.1-1 through 32.1-304, and to amend the Code of Virginia by repealing Title 32, containing chapters numbered 1 through 29 and sections numbered 32-1 through 32-448, Article 10 of Chapter 15.1 of Title 54 of the Code of Virginia, which article contains §§ 54-524.109:9 through 54-524.109:18, and Chapter 4 of Title 62.1 of the Code of Virginia, which chapter contains §§ 62.1-45 through 62.1-63, relating generally to health, so as to revise, rearrange, amend and recodify the laws of Virginia relating generally to health.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a Title numbered 32.1, containing chapters numbered 1 through 8 and sections numbered 32.1-1 through 32.1-304 as follows:

CHAPTER 1.

ADMINISTRATION GENERALLY.

Article 1.

General Provisions.

§ 32.1-1. References to former sections, articles and chapters of Title 32 and other titles.—Whenever any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 32 or any other title of this Code as such titles existed prior to October one, nineteen hundred seventy-nine, are transferred in the same or in modified form to a new section, article or chapter of this title or any other title of this Code and whenever any such former section, article or chapter is given a new number in this or any other title, all references to any such former section, article or chapter of Title 32 or other title appearing in this Code shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

Reviser's Note: New section

§ 32.1-2. Finding and purpose.—The General Assembly finds that the protection, improvement and preservation of the public health and of the environment are essential to the general welfare of the citizens of the Commonwealth. For this reason, the State Board of Health and the State Health Commissioner, assisted by the State Department of Health, shall administer and provide a comprehensive program of preventive, curative, restorative and environmental health services, educate the citizenry in health and environmental matters, develop and implement health resource plans, collect and preserve vital records and health statistics, assist in research, and abate hazards and nuisances to the health and to the environment, both emergency and otherwise, thereby improving the quality of life in the Commonwealth.

Reviser's Note: New section.

§ 32.1-3. Definitions.—As used in this title unless the context requires otherwise or it is otherwise provided:

1. "Board" or "State Board" means the State Board of Health.

2. "Commissioner" means the State Health Commissioner.

3. "Department" means the State Department of Health.

4. "Person" means an individual, corporation, partnership, association or any other legal entity.

Reviser's Note: New section. These proposed title-wide definitions will save ink and promote

clarity.

§ 32.1-4. Sovereign immunity.—Nothing contained in this title shall be construed to be a waiver of the defense of sovereign immunity except where expressly provided by the laws of this Commonwealth.

Reviser's Note: New section. The courts have become increasingly hostile to the doctrine of sovereign immunity and the Federal government has endeavored to compel the states to waive their sovereign immunity by virtue of their participation in various joint federal-state programs. The purpose of this proposed section is to make it clear that the Commonwealth of Virginia is not waiving its sovereign immunity.

Article 2.

State Board of Health.

§ 32.1-5. Appointment of members; terms and vacancies.—There shall be a State Board of Health which shall consist of nine residents of the Commonwealth appointed by the Governor for terms of four years each. Two members of the Board shall be members of the Medical Society of Virginia, one member shall be a member of the Virginia Pharmaceutical Association, one member shall be a member of the State Dental Association, one member shall be a member of the Virginia Nurses Association and one member shall be a member of the Virginia Veterinary Medical Association. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term.

No person shall be eligible to serve more than two full consecutive four-year terms.

Reviser's Note: Source § 32-1.

§ 32.1-6. Meetings and chairman.—The Board shall meet annually in the city of Richmond and at such other times and places as it determines. It shall elect from its number a chairman who shall perform the usual duties of such officer in addition to the particular duties prescribed by law.

Reviser's Note: Source § 32-2.

§ 32.1-7. Bylaws.—The Board may adopt bylaws for its operation.

Reviser's Note: Source § 32-3.

§ 32.1-8. Quorum.—Five members of the Board shall constitute a quorum for the transaction of any lawful business.

Reviser's Note: Source § 32-4.

§ 32.1-9. Secretary.—The Commissioner or, with the approval of the Board, his designee shall act as secretary of the Board and shall not be entitled to any additional compensation for such service.

Reviser's Note: Source § 32-5. A proposed change here allows the Commissioner to be secretary to the Board.

§ 32.1-10. Compensation.—Each member of the Board shall receive fifty dollars for each day or part thereof in which such member is engaged in the discharge of his duties as a member of the Board, together with his actual expenses incurred in attending meetings of the Board or while otherwise engaged in performing duties as a member of the Board, to be paid out of the Board's funds.

Reviser's Note: Source § 32-22. A proposed change increases the per diem for Board members from $25 to $50.

§ 32.1-11. Environmental health services; laboratory services; and medical care services.—A. The Board may formulate a program of environmental health services, laboratory services and

preventive, curative and restorative medical care services, including home and clinic health services described in Titles V, XVIII and XIX of the United States Social Security Act and amendments thereto, to be provided by the Department on a regional, district or local basis.

B. The Board shall define the income limitations within which a person shall be deemed to be medically indigent. Persons so deemed to be medically indigent shall receive the medical care services of the Department without charge. The Board may also prescribe the charges to be paid for the medical care services of the Department by persons who are not deemed to be medically indigent and may, in its discretion and within the limitations of available funds, prescribe a scale of such charges based upon ability to pay. Funds received in payment of such charges are hereby appropriated to the Board for the purpose of carrying out the provisions of this title.

C. The Board shall review periodically the program and charges adopted pursuant to this section.

Reviser's Note: Source § 32-8.1. Subsection A. remains essentially unchanged, with Title V added to the titles of Social Security Act specified. Added is elaboration of the types of programs to be conducted. Most of subsection B. is new. Other provisions of state and federal law require a determination of medical indigency. The proposed provision for the Board of Health to determine medical indigency will result in uniform, statewide application of the term. Subsection C. is new.

§ 32.1-12. Regulations.—The Board may make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department.

Reviser's Note: Source § 32-6. The present section has been rewritten to be more comprehensive.

§ 32.1-13. Emergency orders and regulations.—The Board may make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.

Reviser's Note: Source § 32-12.

§ 32.1-14. Annual report.—The Board shall annually make a written report to the Governor and General Assembly. Such report shall set forth the activities of the Department and shall include a detailed statement of all expenditures by or on account of the Board, the Commissioner and the Department, the health statistics of the Commonwealth and other useful information.

Reviser's Note: Sources §§ 32-20 and 32-30. The sections are rewritten and combined. Present provision for reporting upon request is not carried forward.

§ 32.1-15. Suggestions as to legislation.—The Board may, at each regular session of the General Assembly, suggest any legislative action deemed necessary for the better protection of life and public health.

Reviser's Note: Source § 32-21.

Article 3.

Department of Health and State Health Commissioner.

§ 32.1-16. State Department of Health.—There shall be a State Department of Health under the supervision and management of the State Health Commissioner. The Commissioner shall carry out his management and supervisory responsibilities in accordance with the policies, rules and regulations of the Board.

Reviser's Note: The Department of Health is officially established by this new section. The Department is presently referred to in Title 2.1 and throughout Title 32.

§ 32.1-17. Appointment; qualifications; term.—A. There shall be a State Health Commissioner appointed by the Governor. The Commissioner shall be a physician licensed to practice medicine in this Commonwealth and shall be certified by the American Board of Preventive Medicine, experienced in public health duties, sanitary science and environmental health, and otherwise qualified to execute the duties incumbent upon him by law.

B. The Commissioner shall hold office for the term of four years unless sooner removed by the Governor.

Reviser's Note: Source §§ 32-23 and 32-25. The qualifications of the Commissioner are proposed to be changed to require certification by the American Board of Preventative Medicine. Deleted is the present requirement that the Commissioner reside and be headquartered in the City of Richmond.

§ 32.1-18. Executive officer of Board.—The Commissioner shall be the executive officer of the Board but shall not be a member thereof.

Reviser's Note: Source § 32-24.

§ 32.1-19. Duties prescribed by Board.—The Commissioner shall perform such duties as the Board may require, in addition to the duties required by law.

Reviser's Note: Source § 32-27.

§ 32.1-20. Vested with authority of Board.—The Commissioner shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board.

Reviser's Note: Source § 32-28.

§ 32.1-21. Salary.—The Commissioner shall receive such salary as is fixed by law and shall devote his entire time to his official duties; provided, however, that the Board, with the approval of the Governor, may authorize the Commissioner to accept or undertake teaching activities for compensation.

Reviser's Note: Source § 32-26. A new proviso is inserted to allow teaching activities for compensation. A similar provision for the Chief Medical Examiner already exists.

§ 32.1-22. Personnel; Deputy Commissioner.—A. The Commissioner may employ such personnel as are necessary for the proper performance of his duties as executive officer of the Board.

B. The Commissioner, subject to the approval of the Board, may appoint a Deputy Commissioner of Health who shall meet the qualifications for appointment as Commissioner and who may exercise the powers and perform the duties of the Commissioner in the case of the absence or inability to act of the Commissioner.

Reviser's Note: Section 32-31 is rewritten and designated as subsection A. A new subsection B. is proposed to officially establish the position of Deputy Commissioner, needed because of an increased work load and occasions on which the Deputy may be required to take action in the Commissioner's absence.

§ 32.1-23. Publication of information.—The Commissioner may provide for the publication and distribution of such information as may contribute to the preservation of the public health and the prevention of disease.

Reviser's Note: Source § 32-11. It is proposed that this authority be shifted from the Board to the Commissioner.

Article 4.

Procedures, Inspections, Orders, Penalties,

Representation by Attorney General.

Reviser's Note: This article brings together all the enforcement provisions available to the State Health Department. Repetitive provisions presently duplicated in other articles have been consolidated herein. The applicability of the Administrative Process Act (§ 9-6.14:1 et seq.) to all State Health Department proceedings is specified, as is the right of the Commissioner to enter private property to carry out inspections. The power of the Board to issue administrative orders is set out. Violations of State Health Department regulations are continued as Class 1 misdemeanors.

A major change in the civil enforcement mechanism is proposed. Presently § 32-6.4 makes violation of a Department regulation a civil offense punishable by a fine of up to $10,000 per day, at the discretion of the court. The revised civil enforcement provision allows the imposition of such $10,000 per day fines only after a person has failed to obey an injunction of the court. In a new section, the Attorney General is authorized to represent the Board in all proceedings brought by or against the Board except proceedings which the Commonwealth or any of its agencies or insitutions is a party defendant. In that instance, the Board is authorized to employ special counsel.

§ 32.1-24. Applicability of Administrative Process Act.—The provisions of the Administrative Process Act shall govern the procedures for rendering all case decisions, as defined in § 9-6.14:4, and issuing all orders and regulations under the provisions of this Code administered by the Board, the Commissioner or the Department unless exempt from the Administrative Process Act.

Reviser's Note: This new section is proposed to make certain the applicability of the APA to proposed Title 32.1.

§ 32.1-25. Right of entry to inspect, etc.; warrants.—Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Commissioner or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Commissioner or Department, any regulations of the Board, any order of the Board or Commissioner or any conditions in a permit, license or certificate issued by the Board or Commissioner are being complied with. If the Commissioner or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 of Title 19.2.

Reviser's Note: This new section is proposed to give the Commissioner or his designee the right to enter onto any property and to test to determine whether the statutes, Board regulations, Board or Commission orders, or conditions of permits, licenses or certificates are being complied with. It provides for inspection warrants to be issued as provided in Chapter 24 (Inspection Warrants) of Title 19.2 (§§ 19.2-393 et seq.) Chapter 24 is the subject of a companion bill to the Title 32.1 bill.

§ 32.1-26. Orders.—The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in § 9-6.14:4, of the Board or Commissioner. Any such order shall be issued only after a hearing with at least thirty days notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 32.1-13.

Reviser's Note: Source. New.

§ 32.1-27. Penalties, injunctions, civil penalties and charges for violations.—A. Any person, violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order

of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy.

C. Without limiting the ~~remedies~~ which may be obtained in subsection B., any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B. shall be subject, in the discretion of the court, to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or ~~refused~~ to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil ~~charges~~ for past violations in specific sums, not to exceed the limit specified in subsection C. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection C.

Reviser's Note: Sources (A.)-§ 32-15; (B.-D.)-§ 32-6.4. Rewrites § 32-15, broadening scope of possible violations. Subsections B., C. and D. add a provision for requiring compliance with provisions of the title, as well as regulations or orders. Alters civil monetary penalty provisions so that such penalty may be imposed only for failure to comply with court orders pursuant to subsection B.

§ 32.1-28. When Attorney General to represent Board; special counsel.—The Attorney General shall represent the Board and Commissioner in all actions and proceedings for the enforcement of regulations or orders of the Board or Commissioner or the provisions of this title except actions or proceedings to which the Commonwealth or any of its agencies or institutions is a party defendant. Upon approval by the Governor, the Board is authorized to employ special counsel in such actions or proceedings.

Reviser's Note: This new section is similar to § 62.1-61, which provides for representation of the Board in matters relating to the public water supply (Chapter 4 of Title 62.1). It provides specific authority for the Board to obtain outside counsel when representation by the Attorney General's office is impossible.

§ 32.1-29. Employment of attorney in certain cases.—If the Commissioner, any Board member or any officer or employee of the Department is arrested, indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his duties as such, the Commissioner may employ an attorney approved by the Attorney General to defend such person. The compensation for such attorney shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the administration of the Department.

Reviser's Note: New section. Similar provisions are in effect for certain other departments.

Article 5.

Local Health Departments and Directors.

Reviser's Note: Title 32 contains a collection of individual statutes on the operation of local health departments, the majority of which are now outdated. Through the years, the local health departments have evolved from purely independent units to a system whereby they are operated on a partnership basis with the State Health Department under §§ 32-40.1 and 32-40.2.

The new language of proposed Title 32.1 reflects the current partnership arrangement, which includes all cities and counties, but retains for them the option of independent operation. Should individual operation be selected by a city or county, provisions are included for such locality to carry out all State health laws and for local health ordinances to be no less stringent than State health laws or regulations of the Board.

Various sections relating to local boards of health have been deleted.

§ 32.1-30. Local health departments.—Each county and city shall establish and maintain a local department of health which shall be headed by a local health director. Each such local health director shall be a physician licensed to practice medicine in this Commonwealth.

Reviser's Note: New section. Localities are required to have local boards of health if they are not in a partnership agreement with the State Board of Health. These "local boards" have evolved into local health departments.

§ 32.1-31. Operation of local health department under contract with Board.—A. The governing body of any county or city may enter into a contract with the Board for the operation of the local health department in such county or city.

B. Each contract between a county or city and the Board shall specify the services to be provided in addition to the services required by law and shall contain such other provisions as the Board and the governing body of the county or city may agree upon.

C. Whenever in the opinion of the State Health Commissioner the operation of any local health departments operated under contractual agreement with the Board may be accomplished in a more efficient and economical manner by the consolidation of such local health departments, the Commissioner may propose the creation of a district health department composed of such local health departments. Such district health department shall be created by resolution duly adopted by the governing body of each county and city to be included in such district.

D. Whenever a contract is entered into between a county or city and the Board as provided in this section, the Commissioner shall appoint the health director for the local health department. Whenever a district health department is formed as provided in this section, the Commissioner shall appoint a district health director who shall be deemed to be the local health director of each county and city in the district. Each health director appointed by the Commissioner shall be employed full-time and shall be a State employee. Such health director shall perform such duties as may be prescribed in the contract or contracts and, with the approval of the Commissioner, any other health related duties prescribed by local ordinances.

E. Every employee of a local or district health department operated under a contract with the Board shall be a State employee; but if such person was an employee of such political subdivision and a member of the local retirement system on the effective date of any such contract and does not elect, in writing and within sixty days after the effective date of such contract, to become a member of the Commonwealth's retirement system, such employee shall remain a member of the local retirement system.

In any case in which the effective date of such contract of affiliation is prior to July one, nineteen hundred seventy-seven, any member of the Virginia Supplemental Retirement System who became a member by such election and who has withdrawn his contributions from the local retirement system may be credited with his creditable service in such local system upon payment to the Virginia Supplemental Retirement System of an amount equal to five per centum of his salary rate at the date of payment multiplied by the number of years of service to be credited. Such crediting of service shall be allowed only if such member files written request therefor with the Board prior to October one, nineteen hundred seventy-seven.

Reviser's Note: Sources (A.)-§§ 32-40.1 and 32-40.2; (B.)-new; (C.)-§ 32-40.2; (D.)-new; and (E.)-§ 32-40.2.

§ 32.1-32. Independent local health departments.—A. The governing body of any county or city which does not enter into a contract with the Board for the operation of the local health department shall appoint the local health director and may appoint a local board of health to establish policies and to advise the local health department.

B. Each local health director and local board of health appointed by a governing body as provided in this section shall enforce all health laws of this Commonwealth and regulations of the State Board of Health. In case any such local health director or local board fails to enforce any such laws or regulations, the Commissioner may apply to the appropriate circuit court for an

injunction, writ of mandamus or other appropriate remedy to compel such local health director or local board to enforce such laws or regulations.

Reviser's Note: New section.

§ 32.1-33. If any governing body of a county or city which does not enter into a contract with the Board for the operation of the local health department does not appoint a local health director or establish a local health department, the Board may exercise the authority and perform the duties of the local health director or local health department until a local health director is appointed or local health department is established by the governing body. The compensation of all officers and agents appointed by the Board under this section and the expenses incurred by them shall be a charge upon and shall be paid by such governing body.

Reviser's Note: Source § 32-40.

§ 32.1-34. Local ordinances.—No county, city or town ordinance or regulation shall be less stringent in the protection of the public health than any applicable State law or any applicable regulations of the Board.

Reviser's Note: New section.

CHAPTER 2.

DISEASE PREVENTION AND CONTROL.

Reviser's Note: While contagious diseases still exist, the potential for epidemic has been greatly diminished by advances in medical and environmental science. This chapter has been rewritten generally to eliminate archaic and cumbersome language and procedures, to retain general authority for the control of communicable diseases, and to reflect modern medical and epidemiological procedures.

Article 1.

Reporting of Diseases.

§ 32.1-35. List and reports of communicable diseases.—The Board shall promulgate from time to time a list of diseases, including diseases caused by exposure to any toxic substance as defined in § 32.1-239, which shall be required to be reported. The Board may classify such diseases and prescribe the manner and time of such reporting.

Reviser's Note: Source § 32-16.

§ 32.1-36. Reports by physicians and laboratory directors.—Every physician practicing in this Commonwealth who shall diagnose or reasonably suspect that any patient of his has any disease required by the Board to be reported and every director of any laboratory doing business in this Commonwealth which performs any test whose results indicate the presence of any such disease shall make a report within such time and in such manner as may be prescribed by regulations of the Board.

Reviser's Note: Source § 32-48. The second paragraph of the present section is transferred. This section includes a new provision for directors of laboratories to report diagnoses or the performance of tests which indicate the presence of diseases required to be reported. This reflects the development of medical laboratories exclusively for the performance of medical testing as opposed to the performance of such testing by individual physicians in the past. Provides for certain reporting requirements to be prescribed by regulation, rather than in the statutes or by the Commissioner.

§ 32.1-37. Reports by persons other than physicians.—The person in charge of any medical care

school or summer camp as defined in § 35-43 shall immediately make or cause to be made a disease required by the Board to be reported when such information is available to and that person has reason to believe that no physician has reported such disease as in § 32.1-36. Such report shall be made by telephone to the local health director or to the Commissioner.

Reviser's Note: Source § 32-49. This section is rewritten, altering the class of those subject to and the manner of reporting. A general penalty provision is found elsewhere

§ 32.1-38. from liability.—Any person making a report required by this chapter shall be civil liability or criminal penalty connected therewith unless it is proved that such person acted with malicious intent. Neither the Commissioner nor any local health director shall disclose to the public the name of any person making a report pursuant to this chapter.

Reviser's Note: Source § 32-48. Immunity is somewhat broadened by this proposed section classes of reports to be immune. Includes local health directors in last sentence.

Reviser's Note: Section 32-41 (Report of diseases to State Board) is deleted as unnecessary in view of the Board's authority to include, in the contract for the operation of a local health requirements.

Article 2.

Investigation of Diseases.

Reviser's Note: The present sections on surveillance and investigations of disease were consolidated into a new article.

§ 32.1-39. Surveillance and investigation.—The Board shall provide for the surveillance of and investigation into all preventable diseases and epidemics in this Commonwealth and into the means for the prevention thereof. When any outbreak or unusual occurrence of a preventable disease shall be identified through reports required pursuant to Article 1 of this chapter, the Commissioner or his designee shall investigate the disease in cooperation with the local health director or directors in the area of the disease. If in the judgment of the Commissioner the resources of the locality are insufficient to provide for adequate investigation, he may assume direct responsibility and exclusive control of the investigation, applying such resources as he may have at his disposal. The Board may issue emergency regulations and orders to accomplish the investigation.

Reviser's Note: Sources §§ 32-10 and 32-42. Unnecessary provisions were deleted from the proposed article.

§ 32.1-40. Authority of Commissioner to examine medical records.—Every practitioner of the healing arts and every person in charge of any medical care facility shall permit the Commissioner or his designee to examine and review any medical records which he has in his possession or to which he has access upon request of the Commissioner or his designee in the course of investigation, research or studies of diseases or deaths of public health importance. No such practitioner or person shall be liable in any action at law for permitting such examination and review.

Reviser's Note: Source § 32-10.1. The range of records which may be obtained is broadened. The section is rewritten so as to require access. Added are persons in charge of medical facilities.

§ 32.1-41. Anonymity of patients and physicians.—The Commissioner or his designee shall preserve the anonymity of each patient and physician whose records are examined pursuant to § 32.1-40 except that the Commissioner, in his sole discretion, may divulge the identity of such patients and physicians if pertinent to an investigation, research or study. Any person to whom such identities are divulged shall preserve their anonymity.

Reviser's Note: The section rewrites and combines §§ 32-10.2 and 32-10.3.

Article 3.

Disease Control Measures.

Reviser's Note: Present sections on control of communicable diseases were consolidated into a new Article 3.

§ 32.1-42. Powers of the Board in the control of disease.—The Board may promulgate regulations and orders to meet any emergency or to prevent a potential emergency caused by a disease dangerous to public health.

Reviser's Note: New section.

§ 32.1-43. Powers of the Commissioner in the control of disease.—The Commissioner shall have authority to require isolation, quarantine, vaccination or treatment of any individual when he determines any such measure to be necessary to control the spread of any disease of public health importance.

Reviser's Note: Source § 32-8. Proposed is a shift in authority from the Board to the Commissioner, who is empowered to require treatment and vaccination.

§ 32.1-44. Person may choose method of treatment.—Nothing contained in §§ 32.1-42 and 32.1-43 shall be construed to prevent or restrict any isolated or quarantined person from choosing his own method of treatment or to limit any diseased person in his right to choose or select whatever method or mode of treatment he may believe to be the most efficacious in the cure of his ailment.

Reviser's Note: Source § 32-13.

§ 32.1-45. Expense of treatment.—Any person required to be treated pursuant to § 32.1-42 or § 32.1-43 shall bear the expense, if any, of such treatment.

Reviser's Note: Source § 32-56. Deleted from the present section are provisions for payments by owners of the lot, vessel or house from which the patient is moved, or by the spouse, or, as a last resort, by the locality.

§ 32.1-46. Immunization of children against certain diseases.—A. The parent, guardian or person in loco parentis of each child within this Commonwealth shall cause such child to be immunized by vaccine against diphtheria, tetanus, whooping cough and poliomyelitis before such child attains the age of one year and against measles (rubeola) and German measles (rubella) before such child attains the age of two years. The parent, guardian or person in loco parentis may have such child immunized by a physician or may present the child to the appropriate local health department which shall administer the required vaccines without charge.

B. A physician or local health department administering a vaccine required by this section shall provide to the person who presents the child for immunizations a certificate which shall state the diseases for which the child has been immunized, the numbers of doses given, the dates when administered and any further immunizations indicated.

C. The vaccines required by this section shall meet the standards prescribed in, and be administered in accordance with, regulations of the Board.

D. The provisions of this section shall not apply if:

1. The parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or practices, unless an emergency or epidemic of disease has been declared by the Board, or

2. The parent or guardian presents a statement from a physician licensed to practice medicine in Virginia which states that the physical condition of the child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child.

Reviser's Note: Source § 32-57.1. Changes in this section are proposed to shift responsibility for immunization from the Board to the parent, guardian, or person in loco parentis of the child. Proposed in subsection A. is a provision for the parent to have the child immunized by a physician or to present the child to the appropriate health department for vaccination. New also is subsection B., requiring that a certificate of immunization shall be provided by the person performing the immunizations. Proposed to be deleted are §§ 32-47.1 through 32-47.8, requiring immunization against certain diseases only in certain counties.

§ 32.1-47. Exclusion from school.—Upon the identification of an outbreak, potential epidemic or epidemic of a vaccine-preventable disease in a public or private school, the Commissioner shall have the authority to require the exclusion from such school of all children who are not immunized against that disease.

Reviser's Note: This new section would confer the power to exclude children from school, for which there has been no clear statutory authority. The sections regarding the immunization of children are administered in conjunction with § 22-220.1, which requires immunization before entrance into the school.

§ 32.1-48. Powers of Commissioner in epidemic.—Nothing in this article shall preclude the Commissioner from requiring immediate vaccination of all persons in case of an epidemic of any disease of public health importance for which a vaccine exists other than a person to whose health the administration of a vaccine would be detrimental as certified in writing by a physician licensed to practice medicine in this Commonwealth.

Reviser's Note: New section.

Reviser's Note: A number of sections in this area are deleted for various reasons. They deal with: exclusion of infected persons from public places; persons exposed to infection not to travel into the State; duties of Commissioner as to infected persons, goods or animals entering Virginia; removal of cases of communicable disease; removal of infected persons to hospital; procedure when health officer refused admittance; expenses of removal of infected persons and things; a penalty provision; inspection of construction camps; common drinking cups and towels; regulation of plumbing and sewer connections by localities; regulation of public laundries; sanitary privies; and quarantines.

Article 4.

Tuberculosis.

Reviser's Note: Sections on the detection and control of tuberculosis have been consolidated, revised, and updated in terminology. Several sections have been deleted. The first section of this article mandates that tuberculosis be included in the list of communicable diseases required to be reported, which reflects the historical public health concern for this disease. While rarely used, the general authority for quarantine of tuberculosis patients, or those suspected of having the disease is retained because of the highly infectious nature of the disease.

The Board retains the authority to construct and operate facilities for the treatment of tuberculosis, but because of today's method of treatment and the efficacy of new drug therapy, the trend is to treat such patients in the general hospital setting. Therefore the Board is given the alternative of entering into contractual arrangements for the treatment of such patients.

Provision for the patient participation in payment of care, based on ability, is retained, but for the first time provision for acceptance of third party payment is specifically included in this statute.

§ 32.1-49. Tuberculosis required to be reported.—The Board shall include tuberculosis in the list of diseases provided for in § 32.1-35 which are required to be reported.

Reviser's Note: New section.

§ 32.1-50. Examination of persons suspected of having tuberculosis.—Any local health director may request any person having or reasonably suspected of having tuberculosis to be examined

immediately for the purpose of ascertaining the presence or absence of the disease and determining the degree of communicability, if any. Such examination may be made by any licensed physician selected by such person at his own expense or by the local health director at no cost to such person.

Reviser's Note: Source § 32-85.1.

§ 32.1-51. Quarantine or isolation.—A. The Commissioner may quarantine or isolate, at such place as he may designate, any person who refuses or fails to comply with a request that he be examined as provided in § 32.1-50 or who is found to have tuberculosis in a communicable form.

B. If the Commissioner finds that any person quarantined or isolated pursuant to subsection A. may be temporarily released without exposing others to infection, he may release such person for such period and under such conditions as he may prescribe to protect the health of the person and of the public.

C. The Commissioner shall terminate the quarantine or isolation authorized by subsection A. when any person suspected of having tuberculosis in a communicable stage shall be found not to be so infected or when any person having had tuberculosis in a communicable stage shall be no longer communicable as determined by the Commissioner through clinical examinations and all necessary laboratory tests.

Reviser's Note: Sources §§ 32-85.1 and 32-85.3.

§ 32.1-52. Failure to comply with order of quarantine or isolation; violation of conditions of release.—Any person who fails or refuses to comply with the provisions of an order of quarantine or isolation issued to him or who violates the conditions of any temporary release from quarantine shall be deemed to have committed such violation in the county or city wherein such person may be found and shall be guilty of a misdemeanor punishable by confinement at an appropriate State correctional institution for a term not exceeding twelve months. The order of quarantine or isolation of any person convicted under this section shall remain in force and upon release from confinement such person shall be quarantined or isolated at the place designated in such order or in such other place as the Commissioner may designate.

Reviser's Note: Source § 32-85.4.

§ 32.1-53. Facilities and contracts for treatment of tuberculosis patients.—The Board may construct and operate hospitals and other facilities for the diagnosis and treatment of tuberculosis or enter into contractual arrangements with medical schools and hospitals in the Commonwealth for the care and treatment of tuberculosis patients.

Reviser's Note: Source § 32-212.

§ 32.1-54. Commissioner authorized to charge patients for care.—When a tuberculosis patient is admitted to a facility operated by the Board or under contract with the Board, the Commissioner shall determine whether such patient or any person legally liable for such patient's support is able to pay in whole or in part for such patient's care. In making such determination, the Commissioner shall consider whether such patient or other person can make such payment and meet his other financial responsibilities for the support of himself and his family. Such determination may be made from time to time according to the circumstances of each case. If the Commissioner determines that a patient or person legally liable for his support can pay for the cost of his care or a portion thereof, the Commissioner shall collect for the cost of such care the actual average per diem cost or such portion thereof as the Commissioner may determine the patient should pay. The Commissioner shall also collect any third party payments as may be available for the care and treatment of such patient unless other contractual arrangements are made.

Reviser's Note: Source § 32-312.1. A provision is proposed for third party payments. Deleted is a provision for application of collections.

Reviser's Note: Proposed to be deleted are provisions relating to apartments occupied by consumptives and persons in certain institutions.

Article 5.

Venereal Diseases.

Reviser's Note: Deleted are various reporting requirements which are encompassed by Article 1 of this chapter once venereal disease is designated as a reportable disease and provisions for quarantine.

§ 32.1-55. Venereal disease defined.—As used in this article, "venereal disease" includes syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum and any other sexually transmittable disease determined by the Board to be dangerous to the public health.

Reviser's Note: Source § 32-90. This definition is rewritten. Proposed is a provision for the Board to determine other diseases to be deemed venereal diseases.

§ 32.1-56. Information to be provided patients.—It shall be the duty of every physician or other person who examines or treats a person having a venereal disease to provide such person with information about the disease, including, as a minimum, the nature of the disease, methods of treatment, measures used in preventing the spread of such disease, and the necessity of tests to ensure that a cure has been accomplished.

Reviser's Note: Source § 32-92.

§ 32.1-57. Examination, testing and treatment; authority and duty of health directors.—A. A local health director may require any person suspected of being infected with any venereal disease to submit to examination, testing and treatment if necessary.

B. If any such person refuses to submit to an examination, testing or treatment or to continue treatment until found to be cured by proper test, the local health director may apply to the appropriate circuit court for an order compelling such examination, testing or treatment. Any person willfully failing to comply with such order shall be punishable as for contempt of court.

C. If a person infected with venereal disease elects to receive treatment therefor from the local health department, such treatment shall be afforded and no fee shall be charged.

Reviser's Note: Source § 32-93. Provisions for investigation of cases are proposed to be deleted. Subsections B. and C. are new. Proposed to be deleted are sections dealing with failure to take treatment and quarantine.

§ 32.1-58. Certain persons to be examined, tested and treated.—Each person convicted of a violation of § 18.2-346 or § 18.2-361 shall be examined and tested for venereal disease and treated if necessary.

Reviser's Note: Source § 32-94. Proposed is a reduction in the class of those to be examined upon conviction.

§ 32.1-59. Examination and treatment of venereal disease in certain institutions.—Every person admitted to any State correctional institution and every person who is confined to a State hospital for the mentally ill or mentally retarded shall be examined and tested for venereal disease. If any such person is found to be infected with a venereal disease, the person in charge of such institution shall promptly provide treatment and shall report such case as provided in § 32.1-37.

Reviser's Note: Source § 32-104.

§ 32.1-60. Prenatal tests required.—Every physician attending a pregnant woman during gestation shall examine and test such woman for venereal disease within fifteen days after beginning such attendance. Every other person permitted by law to attend upon pregnant women but not permitted by law to make such examinations and tests, shall cause such examinations and tests to be made by a licensed physician or clinic.

Reviser's Note: Source § 32-104.1. The requirement for testing of pregnant women for syphillis is

proposed to be broadened to include all venereal diseases in recognition of the fact that gonorrhea is the more prevalent disease.

Reviser's Note: Deleted are sections requiring certain records to be kept by druggists, penalty for spreading disease, certificates of cure, certain advertisements and certain notations on birth certificates. (Please see Chapter 2, Article 11 for a specific penalty provision relating to Article 5.)

Article 6.

Prevention of Blindness from Ophthalmia Neonatorum.

Reviser's Note: The major provisions of this article were left essentially unchanged in proposed Title 32.1. The language was reduced and there was some consolidation and deletion of sections. A new provision proposed in Article 11 of this chapter is that the failure of physicians, nurses or midwives to comply with the provisions of the article shall constitute grounds for licensure revocation.

§ 32.1-61. Definition.—As used in this article, "ophthalmia neonatorum" means any inflammation, swelling or unusual redness in one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring at any time within two weeks after the birth of such infant.

Reviser's Note: Source § 32-105.

§ 32.1-62. Instilling drops in infant's eyes; penalty.—In order to prevent ophthalmia neonatorum, the physician, nurse or midwife in charge of the delivery of a baby or, if none, the first attending physician shall, immediately after the baby's birth, perform upon such baby the procedure prescribed by the Board. Such action shall be duly recorded in the medical record of the baby.

Reviser's Note: Source § 32-107. The last sentence is new.

§ 32.1-63. Duty of physician, midwife or nurse noting ophthalmia neonaturum.—It shall be the duty of any physician, midwife or nurse who notes ophthalmia neonatorum within two weeks after the birth of an infant to perform or cause to be performed such tests as are necessary to ascertain the cause of such inflammation and to institute or have instituted appropriate therapy. When the cause of such inflammation is ascertained to be gonococcus, such physician, nurse or midwife shall report the infection to the local health director or the Commissioner as provided in § 32.1-36 for venereal disease.

Reviser's Note: Source § 32-106. This section has been rewritten.

§ 32.1-64. Duty of Board.—The Board shall provide for the gratuitous distribution of the necessary treatment approved by it for ophthalmia neonatorum, together with proper directions for the use and administration thereof, to all physicians, midwives and hospitals requesting it. The Board shall provide free of charge in medically indigent cases the necessary treatment for ophthalmia neonatorum when the cause is ascertained to be gonococcus.

Reviser's Note: Source § 32-109. This section has been rewritten. The last sentence is new.

Reviser's Note: A section relating to the local health officer's duty to investigate and report cases is proposed to be deleted.

Article 7.

Detection and Control of Phenylketonuria.

Reviser's Note: This article has been revised in a fashion similar to Article 6. Again, a new provision is proposed in Article 11 of this chapter for revocation of licensure for failure to comply

with § 32.1-65.

§ 32.1-65. Infants to be subjected to tests.—In order to prevent mental retardation, every infant who is born in this Commonwealth shall be subjected to a test for phenylketonuria except any infant whose parent or guardian objects thereto on the grounds that such test conflicts with his religious practices or tenets. The physician, nurse or midwife in charge of the delivery of a baby or, if none, the first attending physician shall cause such test to be performed.

Reviser's Note: Sources §§ 32-112.1 and 32-112.9. The burden to perform the tests is proposed to be shifted to medical personnel.

§ 32.1-66. Commissioner to notify physicians; reports to Commissioner.—Whenever a test result indicates suspicion of phenylketonuria, the Commissioner shall notify forthwith the attending physician and shall perform or provide for any additional testing required to confirm or disprove the diagnosis of phenylketonuria. All physicians, public health nurses and administrators of hospitals in this Commonwealth shall report the discovery of all cases of phenylketonuria to the Commissioner.

Reviser's Note: Source § 32-112.5. Proposed is that the Commissioner, rather than the Department, shall notify physicians, rather than cases.

§ 32.1-67. Treatment of phenylketonuria; provision by Board.—The Board shall recommend procedures for the treatment of phenylketonuria and shall provide such treatment for infants in medically indigent families.

Reviser's Note: Source § 32-112.6. A provision is proposed to be added for the medically indigent.

Reviser's Note: Deleted are provisions for the Department to contact suspected untested cases and to furnish information on the disorder.

Article 8.

Voluntary Program for Control of Genetic and

Metabolic Diseases.

Reviser's Note: This article would remain essentially the same with two exceptions. Provisions for the detection of inborn errors of metabolism are proposed because this term includes conditions closely related to those specifically identified. The second proposed change authorizes the Board to include the provision of laboratory testing in the voluntary program. Deleted is a declaration of policy.

§ 32.1-68. Commissioner to establish program; review by Board; screening program; laboratory tests.—A. The Commissioner, in cooperation with local health directors, shall establish a voluntary program for the screening of individuals for the disease of sickle cell anemia or the sickle cell trait and for such other genetically-related diseases and genetic traits and inborn errors of metabolism as the Board may deem necessary.

B. The Board shall review the program from time to time to determine the appropriate age and the method of screening for such conditions or traits in the light of technological changes.

C. The screening program shall include provisions for education concerning the nature and treatment of sickle cell anemia, other genetically-related diseases and inborn errors of metabolism and a post-screening counseling program for the treatment of any person determined to have such a condition.

D. The program may include the provision of laboratory testing.

Reviser's Note: Sources §§ 32-112.21 and 32-112.22. Subsection D. is new. Proposes that the

Board, rather than the Commissioner, is to review the program.

§ 32.1-69. Records confidential; disclosure of results of screening.—The results of any particular screening program shall be sent to the physician of the person tested, if known, and either to the parents when the person screened is under the age of eighteen or to the person if he is eighteen years of age or over. The results of a screening program may be used for research and collective statistical purposes. Except as hereinabove provided, all records maintained as part of any screening program shall be strictly confidential and shall be accessible only to the Board, the Commissioner or his agents or to the local health director who is conducting the screening program except by explicit permission of the person who has been screened if such person is eighteen years of age or over or of such person's parent or guardian if he is under age eighteen.

Reviser's Note: Source § 32-112.23. Proposed is that the physician be added to those to be notified and that use of results for research be authorized.

Article 9.

Statewide Cancer Registry.

§ 32.1-70. Records of hospitals and clinics may be supplied to Commissioner; Statewide cancer registry.—A. Each hospital and clinic may make available to the Commissioner or his agents abstracts of their records of patients having malignant tumors or cancers. Such abstracts may include the name, address, sex, race and any other pertinent identifying information regarding each such patient.

B. From such abstracts the Commissioner shall establish and maintain a Statewide cancer registry. The purpose of the Statewide cancer registry shall include but not be limited to:

1. Determining means of improving the diagnosis and treatment of cancer patients.

2. Determining the need for and means of providing better long-term, follow-up care of cancer patients.

3. Collecting data to evaluate the possible carcinogenic effects of environmental hazards.

4. Improving rehabilitative programs for cancer patients.

5. Assisting in the training of hospital personnel.

6. Determining other needs of cancer patients and health personnel.

Reviser's Note: Source § 32-388.

§ 32.1-71. Confidential nature of information supplied; publication.—The Commissioner and all persons to whom information is submitted in accordance with § 32.1-70 shall keep such information confidential. No publication of any such information shall be made except in the form of statistical or other studies which do not identify individual cases.

Reviser's Note: Source § 32-389.

Article 10.

Laboratory Tests.

Reviser's Note: This article reflects the existence of the Division of Consolidated Laboratories separate from the State Health Department and the fact that certain local health departments have capabilities for laboratory testing.

§ 32.1-72. Performance of laboratory tests.—The Division of Consolidated Laboratory Services shall perform any laboratory tests referred to in this chapter upon submission of specimens for the tests. Laboratory tests performed by such Division or by a local health department shall be made without charge.

Reviser's Note: Source § 32-104.1.

Article 11.

Penalty.

§ 32.1-73. Penalty.—The failure of any physician, nurse or midwife to comply with the provisions of § 32.1-60, § 32.1-62 or § 32.1-65 shall, in addition to any other penalty prescribed by law, constitute grounds for revocation of the license or permit of such physician, nurse or midwife.

Reviser's Note: New section.

CHAPTER 3.

MEDICAL CARE SERVICES.

Article 1.

Medical Assistance Program.

§ 32.1-74. Board to submit plan for medical assistance to Secretary of Health, Education and Welfare pursuant to federal law; administration of plan; contracts with providers.—A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to time and submit to the Secretary of the United States Department of Health, Education and Welfare a State plan for medical assistance pursuant to Title XIX of the United States Social Security Act and any amendments thereto.

B. The Commissioner is authorized to administer such State plan and to receive and expend federal funds therefor in accordance with applicable federal and State laws and regulations.

C. The Commissioner is authorized to enter into agreements and contracts with medical care facilities, physicians, dentists and other health care providers where necessary to carry out the provisions of such State plan. Any such agreement or contract shall terminate upon conviction of the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply to the Commissioner for a new contract.

Reviser's Note: Source (A. and B.)-§ 32-30.1; (C.)-new. Sections on the preparation of the State Plan, authority to receive and expend federal funds, and authority for payment for eligible persons in State-owned medical facilities remain essentially the same as at present, although the Board, rather than the Commissioner, would prepare the plan. New subsection C., reflecting actual practice, authorizes the Commissioner to enter into agreements and contracts with hospitals, physicians, dentists, and others to carry out the provisions of the state plan. The proposed felony conviction provisions are new.

§ 32.1-75. Commissioner may make payments to or for eligible persons in State-owned medical facilities.—The Commissioner is authorized, subject to the State plan provided for in § 32.1-74 and any other regulations of the Board, to make payments to or on behalf of eligible persons in State-owned mental hospitals, nursing or geriatric units or other State-owned medical facilities.

Reviser's Note: Source § 32-30.2. Certain duties of the Commissioner are deleted.

§ 32.1-76. Advisory Committee on Medicare and Medicaid.—For the purpose of advising the Governor on responsibilities of the Commonwealth under Titles XVIII and XIX of the United States Social Security Act, as amended, and of assisting the Board and the Commissioner in developing the plan and method of administration for the medical assistance program, there is hereby created an Advisory Committee on Medicare and Medicaid. The Committee shall consist of no more than twenty-one persons. The State Health Commissioner, the Commissioner of Mental Health and Mental Retardation and the Director of the Department of Welfare shall serve as ex-officio members. The Governor shall appoint the remaining members of the Committee, which shall include representatives of the Medical Society of Virginia, the Virginia State Dental Association, Blue Cross and Blue Shield of Virginia, the Virginia Health Care Association, the Virginia Hospital Association, the Virginia Academy of Family Practice, private insurance carriers, the medical schools of the Commonwealth, the Virginia Pharmaceutical Association, and members of consumer groups and organizations, including medical assistance recipients.

Appointments shall be made from nominations submitted by the organizations to be represented where applicable. Members shall be appointed for terms of four years except as necessary to stagger the expiration of terms. Members of the Committee on the effective date of this act shall remain in office until the expiration of the terms for which they were appointed. No person shall be appointed more than once to succeed himself as a member of the Committee; provided, that appointments made to fill vacancies shall not be considered in determining eligibility hereunder. The Committee shall elect its own chairman.

Reviser's Note: This new section would establish by statute the Advisory Committee on Medicare and Medicaid, which is now a requirement of federal law.

Article 2.

Maternal and Child Health and

Crippled Children's Services.

Reviser's Note: These provisions have remained essentially unchanged since 1922 and have been updated in proposed Article 2 to reflect new federal laws and programs for Maternal and Child Care and Crippled Children Services.

§ 32.1-77. State plan for maternal and child health services and crippled children's services.—A. The Board is authorized to prepare, amend from time to time and submit to the Secretary of the United States Department of Health, Education and Welfare, a State plan for maternal and child health services and crippled children's services pursuant to Title V of the United States Social Security Act and any amendments thereto.

B. The Commissioner is authorized to administer such plan and to receive and expend federal funds for the administration thereof in accordance with applicable federal and State laws and regulations.

Reviser's Note: Source § 32-165.

§ 32.1-78. Reporting information about children with health problems or handicapping conditions.—Notwithstanding § 32.1-271 or any other law to the contrary, the Commissioner shall report to the Superintendent of Public Instruction or to the appropriate school division superintendent within the Commonwealth the identity of, and pertinent information about, children with health problems or handicapping conditions which might affect the child's career in school and his need for special education.

Reviser's Note: Source § 32-11.1.

Article 3.

Reviser's Note: This article is now in Title 54, under the State Board of Pharmacy, but administrative details are executed by the Department of Health. The Voluntary Formulary Advisory Board is presently a free-standing Board with authority to promulgate rules and regulations.

The changes proposed would bring the Formulary Board under the aegis of the State Board of Health in the same manner as in the toxic substances law and would give some of the Formulary Board's authority to the Board of Health. The Formulary Board, renamed the Council, would advise but not legally bind the State Board of Health. The principal justification for this change is to create uniformity in the administration in programs for which the Health Department has responsibility.

Deleted is a declaration of policy found in § 54-524.109:9.

§ 32.1-79. Definitions.—As used in this article:

A. " Council" means the Virginia Voluntary Formulary Council established by this article.

B. "Drug" shall have the same meaning as provided in § 54-524.2.

C. "Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or established name.

D. "Formulary" and "Voluntary Formulary" mean the "Virginia Voluntary Formulary" prepared in accordance with the provisions of this article.

Reviser's Note: Source § 54-524.109:10.

§ 32.1-80. Virginia Voluntary Formulary Council created; members; officers; quorum; meetings; record of proceedings.—A. There is hereby created in the Department the Virginia Voluntary Formulary Council. The Council shall have twelve members consisting of four physicians, two pharmacists, one biopharmaceutist, one dentist, the chairman of clinical pharmacology at Virginia Commonwealth University, the administrator of Consumer Affairs of the Department of Agriculture and Consumer Affairs, the Attorney General of Virginia or his designee, and a member of the public whose background and experience will enable him to represent the interests of consumers.

B. Eight of the members of the Council shall be appointed by the Governor from lists of two names submitted for each appointment to be made, the lists for four positions to be submitted by the Medical Society of Virginia, for two by the Virginia Pharmaceutical Association, for one, the biopharmaceutist, by the dean of the school of pharmacy of Virginia Commonwealth University and for one by the Virginia State Dental Association. The public member of the Council shall be appointed by the Governor from among the citizens of the Commonwealth. All appointed members of the Council shall serve at the pleasure of the Governor, and vacancies on the Council shall be filled in the same manner as the original appointment.

C. The Council shall elect from among its members a chairman, a vice-chairman and secretary who shall hold office for a term of one year, and shall have authority to administer oaths in matters before the Council. Officers may be elected to successive terms.

D. A quorum for action by the Council shall be seven members. The Council shall meet at least once every three months, and, in addition, upon call of any two of its officers or the Commissioner.

E. The secretary of the Council shall keep a full record of the proceedings of the Council, which record shall at all reasonable times be open to public inspection.

Reviser's Note: Source § 54-524.109:11. Subsection A. would give a vote to the three presently non-voting members.

§ 32.1-81. Procedure for formulating Formulary.—A. The Council shall recommend to the Board a Formulary and any subsequent revisions or amendments to the Formulary. The Board may accept or reject some or all of the recommendations of the Council but may not otherwise revise, amend or add to such recommendations.

B. In formulating its recommendations to the Board, the Council shall be deemed to be formulating regulations for the purposes of the Administrative Process Act. In addition to the notice given as provided in that Act, the Council shall give thirty days' written notice by mail of the time and place of its hearings to any manufacturer or other supplier who would be aggrieved by the Council's proposed recommendations and to those manufacturers and other suppliers who request the Council in writing that they be informed of such hearings. In acting on the Council's recommendations, the Board need not conduct further proceedings under the Administrative Process Act.

Reviser's Note: New section. See also § 54-524.109:16.

§ 32.1-82. Composition of Formulary.—The Formulary shall consist of (i) a list by established name of drugs of accepted therapeutic value which are available from more than one manufacturer or distributor and (ii) for each such drug, two or more drug products determined to be therapeutically and chemically interchangeable. In preparing such list, the Council may consider formularies of other states, hospitals, and agencies and departments of the United States.

Reviser's Note: Source § 54-524.109:14.

§ 32.1-83. Inclusion and exclusion of drug products.—A. The selection of drug products to be included in the Formulary shall be based upon (i) information from the Federal Food and Drug Administration; (ii) scientific data; (iii) clinical experience of prescribers; (iv) professional judgments of pharmacists; (v) adequacy and quality of manufacturer facilities; and (vi) other pertinent information bearing on the objective of the Formulary.

B. The Council may require of the manufacturer or other supplier of a drug product information specified in subsection A. of this section as well as assurance that the drug product, if included in the Formulary, will continue to be generally available for use within the Commonwealth. The failure or refusal of a manufacturer or other supplier under whose name a drug product is marketed to provide such information or assurance required by the Council shall constitute grounds for the exclusion of the drug product from the Formulary or deletion from the Formulary of a drug product previously included.

C. Any drug product which is not generally available for use within the Commonwealth or which, because of differing prices charged by the manufacturer or other supplier on a discriminatory basis or discriminatory refusal to sell by the manufacturer or other supplier or for both reasons, is not available on the same terms and conditions to all providers of prescription drugs within the Commonwealth may be excluded or deleted from the Formulary. Nothing in this section shall be construed to apply to quantity or other nondiscriminatory discounts available on the same terms and conditions to all providers of prescription drugs; to sales by competitive bidding to federal, State or local governmental agencies, nonprofit health care facilities; or to sales to wholesalers so long as the manufacturer does not require or induce the wholesalers to make the drug available other than on the same terms and conditions to all providers of prescription drugs.

Reviser's Note: Source § 54-524.109:14.

§ 32.1-84. Petition by manufacturers, etc., for inclusion of drug products.—Any manufacturer or other supplier of a drug product may petition the Council for inclusion of a drug product in the Formulary. The form of petition and information required shall be as specified by the Board, which may require that all such information be verified by affidavit or oath. The provisions of § 32.1-83 shall govern inclusion of such drug product in the Formulary.

Reviser's Note: Source § 54-524.109:15.

§ 32.1-85. Adoption.—A formulary of another state or of any agency of the United States, a formulary in use at the University of Virginia Hospital or the hospitals of Virginia Commonwealth University or any combination of such formularies may be adopted for use as the Virginia Voluntary Formulary pending the adoption of an original Formulary. Not later than July one, nineteen hundred eighty-one, the Council shall commence to compile an original Formulary.

Reviser's Note: Source § 54-524.109:12.

§ 32.1-86. Duties of the Board; Formulary fee.—The Board shall make the Formulary available to professional and institutional providers of health care in the Commonwealth, and other persons who in its judgment may benefit from the use of the Formulary and may establish a reasonable fee to be charged for each copy of the Formulary. The Board may also prepare and disseminate information to encourage appropriate use of the Formulary by professional and institutional providers of health care in the Commonwealth.

Reviser's Note: Sources §§ 54-524.109:12 and 54-524.109:13.

§ 32.1-87. Use to be voluntary.—A. Use of the Voluntary Formulary by professional and institutional providers of health care shall be voluntary. A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary when in his prescription, in his own handwriting he writes "Voluntary Formulary," or "V.F." On and after January one, nineteen hundred seventy-nine, prescriptions written on printed prescription forms shall provide a choice of two lines for the prescriber's signature. Alongside the first line, positioned on the left side of the prescription blank, shall be printed the words "Voluntary Formulary permitted." Alongside the second signature line, positioned on the right side of the prescription blank, shall be clearly printed the words "Dispense as written." By signing on the appropriate signature line, the prescriber will indicate his dispensing instruction to the pharmacist.

In the case of an oral prescription, the prescriber's oral dispensing instructions shall be followed. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so apprise the purchaser and shall indicate on his permanent record and, unless otherwise directed by the prescriber, on the prescription label the brand name or, in the case of a generic drug product, the name of the manufacturer or distributor and the lot number of the substituted drug product.

B. When a pharmacist dispenses a drug product other than the drug product prescribed under the provisions of subsection A. hereof pursuant to the Formulary, the drug product dispensed shall be at a lower retail price than that of the drug product prescribed. The difference between the acquisition cost to the pharmacist of the drug product dispensed and the drug product prescribed shall be passed on to the consumer.

Reviser's Note: Source § 54-524.109:17.

§ 32.1-88. Immunity of Board and Council members.—The members of the Council and Board shall be immune, individually and jointly, from any claim, suit, liability, damages or any other recourse, civil or criminal, arising from an act or acts performed in good faith by any such members of the Council or Board acting individually or jointly in carrying out the responsibilities and authority, duties, powers and privileges of a member of the Council or Board under the provisions of this article.

Reviser's Note: Source § 54-524.109:18. It is proposed that this provision be broadened to include the Board of Health.

Article 4.

Miscellaneous Services.

Reviser's Note: These provisions were generally left unchanged except for some clarification of wording.

§ 32.1-89. Health services for persons suffering from hemophilia and related diseases; Hemophilia Advisory Committee.—A. The Board shall establish a program for the care and treatment of persons suffering from hemophilia and other related bleeding diseases who are unable to pay for the entire cost of such services on a continuing basis despite the existence of various types of hospital and medical insurance. The program may include (1) payments on behalf of such persons for obtaining blood, blood derivatives and concentrates, for necessary medical, surgical, dental, hospital and outpatient clinic services and for rehabilitation; (2) the establishment of, or contracts for, hospital and clinic facilities for the diagnosis and treatment of such persons; (3) participation in the cost of

blood processing to the extent that such participation will facilitate the supplying of blood, blood derivatives and concentrates and other efficacious agents to such persons; and (4) development of, or participation in the cost of developing, programs for the care and treatment of such persons, including self-administration, prevention and home care and medical and dental procedures and techniques designed to provide maximum control over bleeding episodes typical in such persons.

B. The Board may provide home and clinic health services for persons suffering from hemophilia or other related bleeding diseases who are not eligible under subsection A. The Board may provide such services through cooperative agreements with medical facilities or other appropriate means. Charges for persons receiving care or treatment under this subsection shall be determined by the Board. Funds received in payment for such services are hereby appropriated to the Board for the purpose of carrying out the provisions of this section.

C. The Governor shall appoint a Hemophilia Advisory Committee to consult with the Board in the administration of this section. The Committee shall be composed of seven persons, one representative each from hospitals, medical schools, blood banks, voluntary agencies interested in hemophilia, local public health agencies, medical specialists in hemophilia, and the general public. Each member shall hold office for a term of four years and until his successor is appointed and qualified. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Committee shall meet as frequently as the Commissioner deems necessary but not less than once each year.

Reviser's Note: Source § 32-8.2. Deleted is a provision authorizing the Board to promulgate regulations, which authority is now found in Chapter 1. Appointments to the committee would be made by the Governor, rather than by the Commissioner. Provisions for payment of committee members' expenses are deleted. Payment of such expenses is covered by §§ 14.1-5 through 14.1-7.

§ 32.1-90. Health services for persons suffering from epilepsy and cystic fibrosis.—The Board may provide, through cooperative agreements with medical facilities or other appropriate means, home and clinic health services for persons suffering from epilepsy and for persons not eligible for child supportive services suffering from cystic fibrosis. Monetary payments from persons for care or treatment under this section shall be determined by the Board. Funds received in payment for such services are hereby appropriated to the Board for the purpose of carrying out the provisions of this section.

Reviser's Note: Sections §§ 32-8.3 and 32-8.4 are combined in this section.

§ 32.1-91. Renal Advisory Committee; created; members; terms; compensation; chairman; meetings.—There is hereby created in the Department the Renal Advisory Committee. The Advisory Committee shall consist of not less than twenty-one members who shall be appointed by the Governor to advise and consult with the Department, the Board, the Commissioner, the Statewide Health Coordinating Council and other interested public and private agencies and institutions. The Advisory Committee shall be composed of representatives of private organizations, consumers, State and local agencies, and renal disease facilities throughout the Commonwealth, who are concerned with the various aspects of renal disease. The representatives shall include persons who have an interest in dialysis, organ transplantation, organ procurement, prevention and detection of kidney disease, and research and treatment of renal diseases.

Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. No member shall be eligible to serve for more than two successive four-year terms. The Committee shall elect its chairman who shall serve a two-year term as such. The Committee shall meet as frequently as the Commissioner or the chairman of the Committee deems necessary. Upon the request of a majority of the members, it shall be the duty of the chairman to call a meeting of the Committee.

Reviser's Note: Source § 32-8.5. Proposed is deletion of the requirement of quarterly meetings. Also, deleted provisions for payment of members' expenses are covered in §§ 14.1-5 through 14.1-7.

§ 32.1-92. Same; duties.—It shall be the responsibility of the Renal Advisory Committee to:

1. Consult and cooperate with local, State and federal agencies and institutions of higher learning concerning the development of educational programs for health providers on renal disease and the prevention and treatment thereof;

2. Undertake or encourage studies of any aspect of renal disease;

3. Stimulate the development of regional and community renal disease committees to help facilitate coordinated planning on the local level;

4. Coordinate programs with other agencies and organizations which have an interest in renal disease and conduct educational programs for the public concerning renal disease and organ donation and procurement; and

5. Take all other reasonable measures to help establish a comprehensive, statewide kidney disease program to help increase the accessibility of medical services for the treatment of renal disease.

Reviser's Note: Source § 32-8.6.

CHAPTER 4.

HEALTH CARE PLANNING.

Article 1.

Medical Care Facilities Certificate of

Public Need.

Reviser's Note: This chapter was generally left unchanged, with two exceptions. The definition of "medical care facilities" was rewritten to simplify and clarify it in accordance with the consistent interpretation of the Commissioner. The definition of "project" was revised to conform to federal requirements. Authority to promulgate regulations is proposed to be shifted from the Commissioner to the Board. A provision is proposed in the appeals section (§ 32.1-98) to clarify standing.

§ 32.1-93. Definitions.—As used in this article, unless the context indicates otherwise:

1. "Health Systems Agency" means an entity organized and operated as provided in § 1512 of United States Public Law 93-641 and designated as a health systems agency pursuant to § 1515 of United States Public Law 93-641.

2. "Medical care facilities" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the Board or the State Mental Health and Mental Retardation Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. The term includes, but is not limited to:

a. general hospitals

b. sanatoriums

c. sanitariums

d. nursing homes

e. intermediate care facilities

f. extended care facilities

g. health maintenance organizations

h. mental hospitals

i. mental retardation facilities

j. intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts

k. independent laboratories

l. specialized centers or clinics developed for the provision of outpatient or ambulatory surgery, renal dialysis therapy, radiation therapy, computerized tomography (CT) scanning or other medical or surgical treatments requiring the utilization of equipment not usually associated with the provision of primary health services

m. home health agencies required to be licensed pursuant to Article 6 of Chapter 5 of this title.

The term "medical care facilities" shall not include:

a. a physician's office except when equipment not usually associated with the provision of primary health services, the cost of which exceeds two hundred thousand dollars per unit of equipment or such greater amount as may be prescribed by the Board, is purchased or leased by such physician.

b. a first aid station for emergency medical or emergency surgical treatment.

3. "Project" shall mean (1) a capital expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which exceeds one hundred fifty thousand dollars or (2) an increase in the bed capacity of the facility with respect to which a capital expenditure of any amount is made, or (3) the introduction of a new service.

4. "Statewide Health Coordinating Council" means the duly authorized Statewide health advisory agency established pursuant to Article 4 of Chapter 4 of this title.

Reviser's Note: Source § 32-211.5. The definition of "project" is proposed to be amended to delete the requirement of capital expenditure for increase in bed capacity and the introduction of new services. This proposed amendment would bring the law into conformity with federal law, thereby allowing the Commonwealth to continue receiving several millions of dollars in federal funds.

§ 32.1-94. Regulations.—The Board may promulgate such regulations as it deems necessary to carry out the purposes of this article.

Reviser's Note: Source § 32-211.6. This new section would shift this authority from the Commissioner to the Board.

§ 32.1-95. Powers and duties of Commissioner.—A. In carrying out the purposes of this article, the Commissioner is authorized and directed:

1. To require such reports and make such inspections and investigations as he deems necessary;

2. To provide a method of administration, appoint a director and take such other action as

may be necessary to effectuate the purposes of this article; and

3. To consult with and seek the advice of the Statewide Health Coordinating Council in carrying out the administration of this article.

B. In making his determination whether a public need exists for the proposed project, the Commissioner shall consider the following:

1. The recommendations of the Health Systems Agency for the area wherein the medical care facility is to be located and of the Statewide Health Coordinating Council;

2. The contribution of the proposed project to the orderly development and proper distribution of adequate and effective health services for the people residing in the area to be served;

3. The size, composition, and growth of the population of the area to be served by the proposed project;

4. The number of existing and planned facilities of types similar to the proposed project and the extent of utilization thereof;

5. The availability of facilities or services, existing or proposed, which may serve as alternatives or substitutes to the proposed project;

6. The compatibility of the proposed project with the State health plan and the State medical facilities plan developed pursuant to United States Public Law 93-641 and Article 2 of Chapter 4 (§ 32.1-103 et seq.) of this title;

7. The availability of medical, nursing, and support personnel to staff such proposed project;

8. The area, population, topography, highway facilities and availability of such services in the particular part of the health service area in which the facility is proposed.

Reviser's Note: Source § 32-211.6.

§ 32.1-96. Application for certificate and action of Commissioner thereon.—Prior to the commencement of any proposed project, an application shall be submitted to the Commissioner for a certificate that there exists a public need for such project. The application shall be in such form and contain such information as the Commissioner may require and may be accompanied by any additional information or material relevant to a determination that a public need exists for such project. Upon receipt of a completed application, the Commissioner shall refer copies thereof to the appropriate Health Systems Agency and the Statewide Health Coordinating Council and each shall make known its recommendations to the Commissioner. The Statewide Health Coordinating Council shall, in making its recommendation to the Commissioner, consider the advice and recommendations of the appropriate Health Systems Agency, which advice and recommendations shall not be binding upon the Statewide Health Coordinating Council or the Commissioner.

If the Commissioner, after consideration of the above information and other relevant factors, finds that a public need exists for the proposed project, he shall approve the application and issue a certificate of public need to the applicant. The Commissioner shall make the above determination within ninety days of the date of receipt of a completed application.

Reviser's Note: Source § 32-211.7.

§ 32.1-97. Hearings.—A. Before making its recommendations to the Statewide Health Coordinating Council and the Commissioner on any application pursuant to § 32.1-96, the appropriate Health Systems Agency shall hold a public hearing on such application in the county or city in which the proposed project is or will be located; provided, however, that public notice must be given in a newspaper of general circulation in such county or city at least nine days prior to such public hearing.

B. The Commissioner shall make an initial determination whether a public need exists for a project on the basis of the completed application and the recommendations of the appropriate

Health Systems Agency and the Statewide Health Coordinating Council. After the Commissioner has made his initial determination, the applicant for the certificate of public need, if aggrieved by such determination, and the Health Systems Agency, if such determination was contrary to its recommendation, may request proceedings before the Commissioner as provided in §§ 9-6.14:11 and 9-6.14:12 of the Administrative Process Act. If after such proceedings the applicant is aggrieved by the Commissioner's final determination or such determination is contrary to the recommendation of the Health Systems Agency, the applicant or the Health Systems Agency may appeal the determination to an independent hearing examiner appointed from and by an agency of State government, other than the Department of Health, designated by the Governor. The hearing examiner shall review the record and any additional evidence presented on behalf of the parties to the appeal. The review of the hearing examiner shall be limited to (i) whether there was substantial procedural compliance and (ii) whether the Commissioner exceeded his discretion in evaluating the evidence presented. The hearing examiner shall take due account of the presumption of official regularity, the experience and specialized competence of the Comissioner, and the purposes of the Medical Care Facilities Certificate of Public Need Law. Time limits for the procedures and determinations set forth in this subsection shall be prescribed by duly adopted regulations of the Board.

Reviser's Note: Source § 32-211.8.

§ 32.1-98. Appeals.—Any applicant aggrieved by a final determination of a hearing examiner may, within thirty days after receipt of notice of such determination, obtain a review, as provided in § 9-6.14:17 of the Administrative Process Act, by the circuit court in the county or city where the proposed project is under construction or is intended to be constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review. Within five days after the receipt of notice of appeal, the Department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed, and the matter shall be thereupon reviewed by the court as promptly as circumstances will reasonably permit. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. The court review shall be upon the record so transmitted and any additional evidence presented on behalf of the parties thereto, and the court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. Upon conclusion of review, the court may affirm, vacate, or modify the final determination of the hearing examiner. Upon a judicial finding that the public need referred to herein presently exists, the Commissioner shall so certify. Any party to the proceeding may appeal from the decision of the court to the Virginia Supreme Court in the same manner as appeals are taken and as provided by law.

Reviser's Note: Source § 32-211.9. The second sentence is new.

§ 32.1-99. Expiration and renewal of certificate; certificate not transferable.—A certificate of public need shall be valid for such period of time, not to exceed two years from date of issuance, as may reasonably be required to complete preparation of detailed construction plans, secure necessary funds and building permits, and other details necessary for the completion of the project; provided, however, the Board may, in its sole discretion, renew the certificate for such additional periods of time as may be reasonably necessary for completion of the project where the applicant has adequately shown that substantial and continuing progress towards completion of the project has been made. A certificate of public need shall not be transferable.

Reviser's Note: Source § 32-211.11.

§ 32.1-100. Enjoining project undertaken without certificate.—The circuit court of the county or city where a proposed project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin, on petition of the Commissioner, the Board or the Attorney General, any project which is constructed, undertaken or commenced without the required certificate of public need as referred to herein.

Reviser's Note: Source § 32-211.12.

§ 32.1-101. Penalty for construction, etc., of project without certificate.—Any person, partnership, firm, company, trust, association, corporation, or other legal entity which commences, constructs, or undertakes construction of a medical care facility project without having obtained a certificate of

public need shall be guilty of a Class 1 misdemeanor.

Reviser's Note: Source § 32-211.13.

§ 32.1-102. Application of article.—Unless exempt as hereinafter provided and only to the extent so exempt, any medical care facility which, on or after July one, nineteen hundred seventy-three, obligates itself by contract or otherwise or commences, undertakes, or constructs a medical care facility project as defined herein shall be subject to all the provisions of this article. However, in the case of any medical care facility providing health care services as of December thirty-one, nineteen hundred seventy-two, which on such date is committed to a formal plan of expansion or replacement, the provisions of this article shall not apply with respect to such expenditure as may be made or obligations incurred for capital items included in such formal plans where preliminary expenditures (including payments for studies, surveys, designs, plans, working drawings, specifications and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the medical care facility) of one hundred thousand dollars or more had been made toward the plan of expansion or replacement during the three-year period ending December thirty-one, nineteen hundred seventy-two. Furthermore, in the case of any new medical care facility construction project as of December thirty-one, nineteen hundred seventy-two, which on such date was committed and lawfully obligated to a formal plan of construction, the provisions of this article shall not apply with respect to such capital items incurred in such plan where preliminary expenditures (including payments for studies, surveys, designs, plans, working drawings, specifications and site acquisition, essential to the initial construction of the medical care facility) of one hundred thousand dollars or more had been made toward the plan of construction or legally obligated as of December thirty-one, nineteen hundred seventy-two. However, upon completion of the proposed expansion or replacement as specified herein or, in the case of new medical care facility construction, upon completion of the construction project referred to herein, all the provisions of this article shall apply to such medical care facilities not herein above specifically excluded.

Reviser's Note: Source § 32-211.15.

Reviser's Note: Three deleted provisions are § 32-211.16, the open staff section, § 32-211.17, requiring a study of the Medical Care Facilities Certificate of Public Need Law by the Joint Legislative Audit and Review Commission and § 32-211.4, setting forth findings of the General Assembly.

Article 2.

Medical Care Facilities Development.

Reviser's Note: This article has been generally rewritten and updated to bring it into conformity with recent changes in the federal programs and acts.

§ 32.1-103. Definitions.—As used in this article:

1. "Construction" means construction of new medical care facilities and the addition to or expansion or alteration of existing buildings, including the initial and subsequent equipping of any such medical care facility.

2. "Federal acts" means all Acts of Congress and amendments thereto providing federal funds for medical care facility planning, construction or modernization.

3. "Medical care facility" means any institution, place, building or agency by or in which permanent facilities are maintained, equipped, operated or offered for disease prevention, diagnosis or treatment or delivery of inpatient or outpatient health and medical care services including, but not limited to a hospital, sanitorium, nursing home, intermediate care facility, extended or skilled care facility, health maintenance organization, rehabilitation facility, mental health or mental retardation facility, public health center, rural health center, laboratory, outpatient facility, education or training facility for health professional personnel, home-health services, and central service facility operated in connection with or as an integral part of an inpatient institution.

4. "Modernization" means the alteration, remodeling, major repair, replacement or renovation of an existing medical care facility, including initial and subsequent replacement of obsolete equipment for an existing medical care facility.

5. "Non-profit" means that no part of the net earnings inures, or may lawfully inure, to the benefit of any private shareholder or individual.

6. "Secretary" means the Secretary of the United States Department of Health, Education, and Welfare.

Reviser's Note: Source § 32-197. The definition of "medical care facility" is new and is an attempt to consolidate many of the former definitions into one. The definition of "modernization" is also new.

§ 32.1-104. Powers and duties of Board.—The Board shall constitute the sole agency of this Commonwealth to carry out the provisions of this article and the federal acts. The Board is authorized and directed:

1. To make an inventory of all existing medical care facilities, to survey the need for construction, modernization and conversion of medical care facilities;

2. On the basis of such inventory and survey, to develop a State medical care facilities plan;

3. To make application to the Secretary for federal funds to assist in carrying out the provisions of this article;

4. To receive federal funds for the construction, modernization and conversion of medical care facilities in behalf of, and transmit them to, applicants therefor;

5. To expend monies appropriated by the General Assembly or received from the federal government for the purposes of administering this article in accordance with State and federal regulations; and

6. To require such reports and make such inspections and investigations as may be desirable to carry out its responsibilities under this article.

Reviser's Note: Sources §§ 32-198, 32-199, 32-201, 32-203, 32-204 and 32-211.

§ 32.1-105. Statewide Health Coordinating Council.—The Statewide Health Coordinating Council shall advise the Board on the administration of this article. The Commissioner may request the Council to review each application for federal funds for the construction, modernization or conversion of a medical care facility and to make recommendations on such application for consideration by the Commissioner.

Reviser's Note: Source § 32-200. In conformity with new federal law, the Statewide Health Coordinating Council would replace the old Hospital Advisory Council. The second sentence is new.

§ 32.1-106. State medical care facilities plan.—The State medical care facilities plan shall be a plan for meeting the need for the construction, modernization or conversion of medical care facilities so that such facilities, together with other existing facilities, will provide and adequately distribute the necessary physical facilities for comprehensive health care services throughout the Commonwealth and so that medical care facilities and services are reasonably accessible to all persons in the Commonwealth. The plan shall set forth projects for the construction, modernization and conversion of medical care facilities in order of priority and relative need. The Board shall from time to time, but not less often than annually, review the medical care facilities plan and make such modifications thereto as it may find necessary.

Reviser's Note: Sources §§ 32-201, 32-202, 32-205 and 32-207. The state plan is required to include a medical care facilities construction program, but it is discretionary whether such plan needs to comply with the requirements of the various federal acts and regulations. This was done to prevent any improper delegation of legislative authority to the federal government.

§ 32.1-107. Application for federal funds.—The Commonwealth or any political subdivision thereof or any public or nonprofit agency authorized to construct and operate a medical care facility may apply for federal funds for the construction, modernization or conversion of a medical care facility. Such application shall be made to the Commissioner on forms prescribed for the purpose.

Reviser's Note: Source § 32-208.

§ 32.1-108. Hearing; approval of applications.—The Commissioner shall afford to every applicant for federal funds pursuant to § 32.1-107 an opportunity for a fair hearing. The provisions of the Administrative Process Act shall not apply to such hearing. Such hearing may be held at the time of review, if any, by the Statewide Health Coordinating Council. If the Commissioner, after affording reasonable opportunities for development and presentation of applications in the order of relative need, finds that a project application comports with the needs and priorities established in the State medical care facilities plan, he shall approve such application and shall recommend and forward it to the Secretary.

Reviser's Note: Source § 32-209. A fair hearing to each applicant is required by federal law. Consequently, since that fair hearing satisfies any due process problems, it was felt that the application of the Virginia Administrative Process Act would be superflous.

§ 32.1-109. Inspection of projects.—The Commissioner shall cause each project for the construction, modernization or conversion of a medical care facility approved by the Secretary to be inspected from time to time, and, if the inspection confirms that adequate progress has been made, the Commissioner shall certify to the Secretary that work has been performed or purchases have been made in accordance with the approved plans and specifications and that payment of an installment of federal funds is due to the applicant.

Reviser's Note: Source § 32-210.

§ 32.1-110. Medical Care Facilities Construction Fund.—Monies received from the federal government for a project for the construction, modernization or conversion of a medical care facility approved by the Secretary and monies appropriated by the General Assembly for such projects shall be deposited in a fund separate and apart from all other public monies of this Commonwealth to be known as the Medical Care Facilities Construction Fund. Monies thus deposited shall be used solely for payments due applicants for work performed or purchases made in carrying out approved projects. Invoices for all payments from the Medical Care Facilities Construction Fund shall bear the signature of the Commissioner or his duly authorized agent for such purpose.

Reviser's Note: Source § 32-211.

§ 32.1-111. Powers of governing bodies of counties and cities.—The governing body of any county or city is authorized to accept and match federal and State funds available for the purposes of this article, to raise funds by taxation for the purpose of medical care facilities construction, modernization, conversion and operation, to deposit funds of the county or city in such depository as the federal or State government may require, to accept and expend federal, State and other funds available for medical care facilities construction, modernization and conversion, to enter into such contracts as the federal and State governments may require for the performance of any conditions imposed upon the acceptance of funds, and to do all necessary and proper things not included in the foregoing which may be required to obtain federal or State funds for the purpose of constructing, modernizating or converting any medical care facility to whose construction, modernization or conversion such county or city is contributing.

Reviser's Note: Source § 32-211.2. Proposed to be added are provisions relating to State funds.

Article 3.

Statewide Emergency Medical Care System.

Reviser's Note: Presently, the Emergency Medical Services chapter contains provisions relating to

both planning functions and to licensure requirements for ambulances and attendants. For better arrangement, in proposed Title 32.1, the emergency medical services planning functions were placed in this chapter and provisions for the licensure of ambulances and attendants were placed in a separate Article 5 of Chapter 5.

§ 32.1-112. Statewide emergency medical care system.—A. The Board shall have the authority and responsibility to develop a comprehensive, coordinated, emergency medical care system in the Commonwealth and to prepare a Statewide Emergency Medical Services Plan, which shall incorporate but not be limited to the plans prepared by the regional emergency medical services councils. The Board shall review such Plan annually and make such revisions as may be necessary or desirable. The objectives of such Plan shall include, but not be limited to, the following:

1. To establish a comprehensive, statewide emergency medical care system which will incorporate facilities, transportation, manpower, communications, and other components as integral parts of a unified system that will serve to improve the delivery of emergency medical services and thereby decrease morbidity, hospitalization, disability and mortality;

2. To reduce the time period between the identification of an acutely ill or injured patient and the definitive treatment and to increase the accessibility of high quality emergency medical services to all citizens of Virginia;

3. To promote continuing improvement in system components including ground, water and air transportation, communications, hospital emergency departments and other emergency medical care facilities, consumer health information and education, and health manpower and manpower training;

4. To improve the quality of emergency medical care delivered on site, in transit, in hospital emergency departments and within the hospital environment;

5. To work with medical societies, hospitals, and other public and private agencies to develop approaches whereby the many persons who are presently using the existing emergency department for routine, nonurgent, primary medical care will be served more appropriately and economically;

6. To conduct, promote and encourage programs of education and training designed to upgrade the knowledge and skills of health manpower involved in emergency medical services; and

7. To provide review and consultation for agencies and organizations that wish to make application to governmental or other sources for grants or other funding to support emergency medical services programs.

B. No voluntary emergency medical service organization shall be required to participate in the comprehensive, Statewide emergency medical care system provided for in this article.

Reviser's Note: Source § 32-310.1:1. Portions of subsection A. have been rewritten. Subsection B. is new.

§ 32.1-113. Regional emergency medical services units and councils.—A. The Board shall designate regional emergency medical services units which shall be existing boards, commissions, agencies or nonprofit organizations authorized to receive and disburse public funds. Each unit shall function under the policy direction of a regional emergency medical services council and shall be charged with the development and implementation of an efficient and effective regional emergency medical services delivery system.

B. Each regional emergency medical services council shall include, if available, representatives of each participating local government, fire protection agencies, law-enforcement agencies, emergency medical service agencies, hospitals, licensed practicing physicians, emergency care nurses, mental health professionals, emergency medical technicians and other appropriate allied health professionals.

C. Each regional emergency medical services council shall adopt and thereafter revise as necessary and desirable a regional emergency medical services plan in cooperation with its unit and the Board and shall review all applications for federal and State funds by its respective regional

emergency medical services unit before such applications are submitted.

D. Each regional emergency medical services unit shall submit to the State Emergency Medical Services Advisory Council all applications for federal and State funds.

Reviser's Note: Source § 32-310.2:2.

§ 32.1-114. State Emergency Medical Services Advisory Council.—A. There is hereby created the State Emergency Medical Services Advisory Council which shall be composed of not more than thirty-seven members. The membership of the Council shall include representatives from the following groups who shall be appointed by the Governor: Virginia Municipal League, Virginia Association of Counties, Medical Society of Virginia, Old Dominion Medical Society, American College of Emergency Physicians, American College of Surgeons, Neuro-Psychiatric Society of Virginia, Virginia Nurses Association, Virginia Pharmaceutical Association, Emergency Department Nurses Association, Virginia affiliate of the American Heart Association, University of Virginia Medical School, Virginia Commonwealth University-Medical College of Virginia, Eastern Virginia Medical School, Virginia Hospital Association, American Red Cross, Virginia Association of Volunteer Rescue Squads, Inc., Virginia State Fireman's Association, commercial emergency medical services, governmental emergency medical services, The Associated Public Safety Communications Officers, State Office of Emergency and Energy Services, State Highway Safety Division, Virginia's Statewide Health Coordinating Council, three consumers and each regional emergency medical services council. Appointments may be made from lists of nominees submitted by such organizations and groups, where applicable. Each regional emergency medical services advisory council shall submit three nominations, at least one of which shall be a representative of providers of pre-hospital care.

B. Of the members first appointed to the Council, ten members shall be appointed for a term of one year and the remaining members for a term of two years. Thereafter, appointments shall be made for terms of two years or the unexpired portions thereof in a manner to preserve insofar as possible the representation of the specified groups. No member may serve more than three successive terms. The chairman shall be elected from the membership of the Council for a term of one year and shall be eligible for reelection. The Council shall meet at least four times annually at the call of the chairman or the Commissioner.

C. The Council shall:

1. Advise the Board in the administration of this article and Article 5 of Chapter 5 of this title;

2. Review and make recommendations on the Statewide Emergency Medical Services Plan and any revisions thereto; and

3. Review and comment on all applications for federal and State funds made by regional emergency medical services units.

Reviser's Note: Source § 32-310.2:1. Present provisions for payment of members' expenses are covered by §§ 14.1-5 through 14.1-7 and are proposed to be deleted here.

§ 32.1-115. Virginia Rescue Squads Assistance Fund.— For the purposes of providing financial assistance to rescue squads and other emergency medical services organizations in the Commonwealth, of providing requisite training for emergency medical service personnel and of purchasing equipment needed by such rescue squads and organizations, there is hereby established the Virginia Rescue Squads Assistance Fund. The Fund shall consist of any funds appropriated for this purpose by the General Assembly and any other funds received for such purpose by the Board. Any such funds unexpended at the end of a fiscal biennium shall remain in the Fund and shall not revert to the general fund.

Reviser's Note: Sources §§ 32-310.9 and 32-310.10. A "legislative finding" is deleted.

§ 32.1-116. Disbursements from Fund.—In accordance with regulations of the Board, the Commissioner shall disburse and expend the funds in the Virginia Rescue Squads Assistance Fund. No funds shall be disbursed directly to any rescue squad or other emergency medical services organization unless such squad or organization operates on a nonprofit basis exclusively for the

benefit of the general public.

Reviser's Note: Source § 32-310.11.

Article 4.

Health Planning and Resources Development.

Reviser's Note: No substantive changes in this article are proposed.

§ 32.1-117. Definitions.—As used in this article:

1. "Consumer" means a person who is neither a direct provider nor indirect provider of health care services.

2. "Council" means the Virginia Statewide Health Coordinating Council.

3. "Health systems agency" means an entity organized and operated as provided in Section 1512 of United States Public Law 93-641 and designated as a Health Systems Agency pursuant to Section 1515 of United States Public Law 93-641.

4. "Federal Act" means United States Public Law 93-641, the National Health Planning and Resources Development Act of 1974, and any amendments thereto.

5. "Provider" means a direct or indirect provider of health care services.

6. "Secretary" means the Secretary of the United States Department of Health, Education and Welfare.

Reviser's Note: Source § 32-211.18.

§ 32.1-118. Statewide Health Coordinating Council created.—A. There is hereby created in the executive branch of the State government a Virginia Statewide Health Coordinating Council.

B. The Council shall consist of not less than sixteen residents of the Commonwealth appointed by the Governor. The Governor shall appoint an equal number of members, but not less than two, from each health systems agency. Not less than one-half of the members so appointed shall be consumers.

C. The Governor may appoint such other persons to serve on the Council as he deems appropriate except that (i) the number of such persons appointed pursuant to this subsection may not exceed forty per centum of the total membership of the Council and (ii) the majority of the persons appointed shall be consumers.

D. Not less than one-third of the providers appointed to the Council shall be direct providers of health care.

E. In addition to the members appointed by the Governor, the Chief Medical Director of the Veterans Administration may designate a representative of the Veterans Administration facilities within the Commonwealth to serve as an ex officio member.

F. Members of the Council appointed by the Governor shall serve at the pleasure of the Governor.

Reviser's Note: Source § 32-211.19.

§ 32.1-119. Bylaws; compensation and expenses of members.—A. The Council shall adopt bylaws for its operation and for the election of its officers. It shall meet at least quarterly.

B. Members of the Council when on business of the Council shall be entitled to receive

compensation at the rate of twenty-five dollars per day and shall be reimbursed for actual expenses incurred.

Reviser's Note: Source § 32-211.20.

§ 32.1-120. Duties of the Council.—The Council is authorized and directed to:

1. Prepare, review and revise as necessary a State health plan which shall be made up of the health plans prepared by the health systems agencies, with due consideration and review of other plans relating to physical and mental health services provided by agencies of the Commonwealth.

2. Review annually the budgets and applications for designation and funding made by the health systems agencies to the Secretary and make recommendations to the Governor and the Secretary on its findings from these reviews.

3. Review annually and approve or disapprove any plan or application submitted by an agency of the Commonwealth for the receipt of any federal funds under the allotment made to the Commonwealth under the United States Public Health Services Act, the Community Mental Health Centers Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act or the Drug Abuse Office and Treatment Act of 1972.

4. Inform the Board generally on the performance of the Council's responsibilities under the provisions of this article and the federal act.

5. Perform such other functions relating to the coordination of health planning as the Governor may request.

Reviser's Note: Source § 32-211.21.

§ 32.1-121. Department of Health to act as designated agency; duties of Commissioner.—The Department is hereby designated as the Health Planning and Development Agency of the Commonwealth for the performance of such functions as are designated by this article and the federal act. The Commissioner shall:

1. Conduct the health planning activities of the Commonwealth and, subject to the approval of the Board, implement those parts of the State Health Plan provided for in § 32.1-120 and the plans of the health systems agencies which relate to the government of the Commonwealth.

2. Prepare, review and revise as necessary a preliminary State health plan which shall be made up of the health plans prepared by the health systems agencies and submit such preliminary plan to the Council.

3. Provide staff and administrative services for the Council and assist the Council in the performance of its functions generally.

4. Administer § 1122 of the United States Social Security Act if the Commonwealth has made an agreement with the Secretary pursuant to such section.

5. After consideration and review of recommendations submitted by the health systems agencies regarding new institutional health services proposed to be offered within the Commonwealth, make findings as to the need for such services.

6. Review at least once every five years all institutional health services being offered in the Commonwealth and, after considering the recommendations submitted by the health systems agencies and the Council regarding such services and after review by the Board of Health, make public the findings.

7. Perform any other functions relating to health planning activities in the Commonwealth as may be requested by the Governor.

Reviser's Note: Source § 32-211.22.

§ 32.1-122. Application of Commissioner for federal funding.—The Commissoner, with the approval of the Board, is authorized to make application for federal funding of the functions of the State Health Planning and Development Agency and to receive and expend such funds in accordance with State and federal regulations.

Reviser's Note: Source § 32-211.23.

CHAPTER 5.

REGULATION OF MEDICAL CARE FACILITIES AND SERVICES.

Article 1.

Hospital and Nursing Home Licensure and Inspection.

Reviser's Note: In view of the proposed deletion of the chapter on maternity hospital licensure, language has been included to encompass hospitals providing maternity care. The Board is given authority to classify hospitals and to require separate standards for different types of hospitals. Sections dealing with appeals from suspensions and revocations of licenses are deleted because of the new title-wide appeals section in Article 4 of Chapter 1 of proposed Title 32.1.

§ 32.1-123. Definitions.—As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

1. "Hospital" means any facility in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or non-surgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, short-term, long-term, out-patient and maternity hospitals;

2. "Nursing Home" means any facility or any identifiable component of any facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled care facilities, intermediate care facilities, extended care facilities and infirmaries.

3. "Nonrelated" means not related by blood or marriage, ascending or descending or first degree full or half collateral.

Reviser's Note: Source § 32-298. It was felt that there should be separate definitions of "hospital" and "nursing home" in order to make the law more understandable to those operating such facilities.

§ 32.1-124. Exemptions.—The provisions of §§ 32.1-123 through 32.1-136 shall not be applicable to: (1) dispensaries or first aid facilities maintained by any commercial or industrial plant, educational institution or convent; (2) institutions licensed by the State Mental Health and Mental Retardation Board; (3) institutions or portions thereof licensed by the State Board of Welfare; (4) hospitals or nursing homes owned or operated by an agency of the Commonwealth or of the United States government; and (5) the office or offices of one or more physicians or surgeons unless such office or offices are used principally for performing surgery.

Reviser's Note: Source § 32-298.

§ 32.1-125. Establishment or operation of hospitals and nursing homes prohibited without license; licenses not transferable.—A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any hospital or nursing home unless such hospital or nursing home is licensed as provided in this article.

B. No license issued hereunder shall be assignable or transferable.

Reviser's Note: Source § 32-299.

§ 32.1-126. Commissioner to issue licenses to and inspect hospitals and nursing homes.—A. The Commissioner shall issue a license for a hospital or nursing home which after inspection is found to be in compliance with the provisions of this article and with all applicable regulations. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for such denial.

B. The Commissioner shall cause each and every hospital and nursing home to be inspected periodically, but not less often than annually, in accordance with the provisions of this article and regulations of the Board.

C. The Commissioner may, in accordance with regulations of the Board, provide for consultative advice and assistance, with such limitations and restrictions as he deems proper, to any person who intends to apply for a hospital or nursing home license.

Reviser's Note: Sources (A and B)-§ 32-300; (C)-§ 32-305(c).

§ 32.1-127. Regulations.—A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety.

B. Such regulations shall include minimum standards for (i) the construction and maintenance of hospitals and nursing homes to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals and nursing homes; and (iii) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence.

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

D. In its regulations, the Board may classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity.

Reviser's Note: Source § 32-301.

§ 32.1-128. Application to practice of religious tenets.—Nothing in this article shall be construed to authorize or require the interference with or prevention of the establishment or operation of a hospital or nursing home for the practice of religious tenets of any recognized church or denomination in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on environmental protection and life safety are complied with.

Reviser's Note: Source § 32-301. Hospitals operated by religious denominations would be required to comply with environmental and life safety standards, rather than with "sanitation" statutes and regulations.

§ 32.1-129. Application for license.—Each application for a hospital or nursing home license shall be made on a form prescribed by the Board. The application shall specify the official name and the kind of hospital or nursing home, the location thereof, the name of the person in charge and such additional relevant information as the Board requires.

Reviser's Note: Source § 32-303.

§ 32.1-130. Service charges.—A. A service charge of one dollar fifty cents per patient bed for which the hospital or nursing home is licensed, but not less than seventy-five dollars nor more than five hundred dollars, shall be paid for each license upon issuance and renewal. The service charge for a license for a hospital or nursing home which does not provide overnight in-patient care shall be seventy-five dollars.

B. All service charges received under the provisions of this article shall be paid into a special fund of the Department and are appropriated to the Department for the operation of the hospital and nursing home licensure and inspection program.

Reviser's Note: Source § 32-304. Proposed is an increase in fees pursuant to a formula based upon the number of beds for which a facility is licensed. Funds so received are to be held in a special fund in the Department for the operation of the licensure program. The revenue received from fees will be insufficient to cover the total cost of operation of the licensure and inspection program, but this fee schedule is more realistic than the present one.

§ 32.1-131. Expiration of licenses.—All licenses shall expire at midnight December thirty-one of the year issued, or as otherwise specified, and shall be required to be renewed annually.

Reviser's Note: Source § 32-304(b).

§ 32.1-132. Alterations or additions to hospitals and nursing homes; additional fees, when necessary.—A. Any person who desires to make any substantial alteration or addition to or any material change in any hospital or nursing home shall, before making such change, alteration or addition, submit the proposal therefor to the Commissioner for his approval. The Commissioner shall review the proposal to determine compliance with applicable statutes and regulations of the Board and as soon thereafter as reasonably practicable notify the person that the proposal is or is not approved.

B. If any such alteration, addition or change has the effect of changing the bed capacity or classification of the hospital or nursing home, the licensee shall obtain a new license for the remainder of the license year before beginning operation of additional beds or in the new classification.

Reviser's Note: Source § 32-305.

§ 32.1-133. Display of license.—The current license shall at all times be posted in each hospital or nursing home in a place readily visible and accessible to the public.

Reviser's Note: Source § 32-306.

§ 32.1-134. Family planning information.—Every hospital providing maternity care shall, prior to releasing each maternity patient, make available to such patient family planning information and a list of family planning clinics located in the Commonwealth, unless medically contraindicated; provided, however, that any such hospital operated under the auspices of a religious institution objecting to distributing lists of family planning clinics on religious grounds shall not be required to distribute them. Such information and lists may include, but need not be limited to, such information and lists as shall be furnished by the Department.

Reviser's Note: Source § 32-154(12).

§ 32.1-135. Administrative sanctions.—A. The Commissioner may restrict or prohibit new admissions to a nursing home or may revoke or suspend the license of a hospital or nursing home for (i) violation of any provision of this article or of any applicable regulation promulgated under this article or (ii) permitting, aiding, or abetting the commission of any illegal act in the hospital or nursing home.

B. If a license is revoked as herein provided, a new license may be issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and all provisions of this article and applicable regulations hereunder have been complied with.

C. Suspension of a license shall in all cases be for an indefinite time. The Commissioner may completely or partially restore a suspended license when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional service charges shall be required for restoring such license.

Reviser's Note: Source § 32-307. Subsection A. contains a new intermediate penalty for violations of law or regulations. This reflects a recommendation from a JLARC study on Long-Term Care Facilities.

§ 32.1-136. Violation; penalties.—Any person owning, establishing, conducting, maintaining, managing or operating a hospital or nursing home which is not licensed as required by this article shall be guilty of a Class 6 felony.

Reviser's Note: Source § 32-310. The penalty is proposed to be increased from a misdemeanor.

§ 32.1-137. Certification of medical care facilities under Title XVIII of Social Security Act.—The Board shall constitute the sole agency of the Commonwealth to enter into a contract with the United States government for the certification of medical care facilities under Title XVIII of the United States Social Security Act and any amendments thereto.

Reviser's Note: New section.

Article 2.

Rights and Responsibilities of

Patients in Nursing Homes.

Reviser's Note: New subsection G. is proposed to require nursing homes to certify to the Commissioner that they are in compliance with the article in order to obtain a license. No other substantive change was made.

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions, certification of compliance.—A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;

3. Is fully informed by a physician of his medical condition unless medically contraindicated as documented by a physician in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

4. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in his medical record;

5. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

6. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this

responsibility to the facility for any period of time in conformance with State law;

7. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

8. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

9. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

10. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

11. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

12. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician in his medical record;

13. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician in his medical record; and

14. If married, is assured privacy for visits by his or her spouse and if both are in-patients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician in the medical record.

B. All established policies and procedures regarding the rights and responsibilities of patients shall be posted conspicuously in a public place in all nursing home facilities required to be licensed under the provisions of Article 1 of Chapter 5 (§ 32.1-123 et seq.) of this title. Copies of such policies and procedures shall be made available to patients upon admittance to the facility and to patients currently in residence, to any guardians, next of kin, sponsoring agency or agencies, and to the public.

C. The provisions of this section shall not be construed to restrict any right which any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A. hereof as they pertain to (i) a patient adjudicated incompetent in accordance with State law, (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee, except when the facility itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social Security Act.

F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution to which the provisions of § 32.1-128 are applicable.

G. Each nursing home facility to which this section is applicable shall certify to the Commissioner that it is in compliance with the provisions of this section as a condition to the issuance or renewal of the license required by Article 1 of this chapter.

Reviser's Note: Source § 32-296.1. Subsection G. is new.

Article 3.

Blood Banks.

Reviser's Note: No substantive changes are proposed in this article, but the language of separate paragraphs covering commercial and noncommercial blood banks was consolidated. Certain penalty and enforcement provisions are deleted in favor of title-wide provisions.

§ 32.1-139. Definition.—As used in this article, unless the context clearly indicates otherwise, "commercial blood bank" means any activity that procures, extracts, collects, prepares, tests, processes, stores, distributes, or sells for profit human whole blood, human whole blood derivatives or blood components specified by regulations of the Board except any such activity conducted by a licensed hospital as a part of its regular hospital operations.

Reviser's Note: Source § 32-104.5.

§ 32.1-140. Regulations.—A. The Board shall prescribe by regulation such minimum standards for the number and qualifications of professional and administrative staff of commercial and noncommercial blood banks and for equipment and facilities of such blood banks as it deems necessary to assure a safe and reliable supply of blood, blood components and blood derivatives for health services in the Commonwealth.

B. The Board may classify blood banks as commercial or noncommercial.

C. The Board shall provide in its regulations for reporting such records and other information concerning infected donors, donor selection, donor testing, collection methods, blood quantity and supply as the Board may deem necessary and may specify reporting requirements for commercial and noncommercial blood banks.

Reviser's Note: Sources (A.)-§§ 32-104.7, 32-104.11; (B. and C.)-§ 32-104.9.

§ 32.1-141. License required for commercial blood bank.—No person shall establish, maintain, conduct or operate a commercial blood bank in this Commonwealth unless such blood bank is licensed as provided in this article.

Reviser's Note: Source § 32-104.6.

§ 32.1-142. Application for and issuance of license; fee; inspections.—Any person desiring to establish, conduct, maintain or operate a commercial blood bank may file a written application for a license on a form prescribed by the Board accompanied by a fee of two hundred fifty dollars. The Commissioner shall issue a license for such commercial blood bank to any such applicant if the Commissioner determines that the blood bank is in compliance with the regulations prescribed by the Board pursuant to this article. No such license shall be transferable.

The Commissioner shall cause to be conducted an inspection prior to the issuance of a license to insure that the commercial blood bank is in compliance with such regulations. Thereafter, the Commissioner shall cause inspections to be conducted at least annually to insure continuing compliance with such regulations. A license shall be renewable annually. Payment of a fee of two hundred fifty dollars shall be required to renew a license.

Reviser's Note: Source § 32-104.7.

§ 32.1-143. Refusal, suspension or revocation of license.—The Commissioner may refuse to issue or to renew or may suspend or revoke the license of any commercial blood bank after inspection and due notice of deficiency, if the commercial blood bank is not in compliance with the regulations prescribed by the Board pursuant to this article.

Reviser's Note: Source § 32-104.8.

§ 32.1-144. Duties of Division of Consolidated Laboratory Services.—The Division of Consolidated Laboratory Services shall perform such duties under this article as the Commissioner may request.

Reviser's Note: New section.

Article 4.

Midwives.

Reviser's Note: No major substantive changes are proposed in this article.

§ 32.1-145. Who deemed midwife.– A. Any person who, for compensation, assists in delivery and postnatal care by affirmative act or conduct immediately prior and subsequent to the labor attendant to childbirth in conjunction with or in lieu of a member of the medical profession shall be deemed a midwife and to be practicing midwifery.

B. As used in this section, "compensation" means anything of value received before or after the labor attendant to childbirth, with or without an express agreement between the person so assisting and the patient or anyone in the patient's behalf.

Reviser's Note: Sources (A.)-§ 32-167.1; (B.)-§ 32-167.2.

§ 32.1-146. Registration and permits.–No person shall practice midwifery unless such person is registered and possesses a permit to practice midwifery as provided for in this section. Any person who fulfills such requirements to practice midwifery as the Board may, by regulation, promulgate shall be eligible for a permit. Upon registration and qualification, the permit shall be issued without charge by an official of the Department designated by the Commissioner and countersigned by the director of the local health department.

Reviser's Note: Source § 32-167.3.

§ 32.1-147. Application of this article.–The provisions of this article shall apply only to midwives who are not registered nurses and who are registered and permitted to practice pursuant to this article prior to January one, nineteen hundred seventy-seven. All subsequent licensure for midwifery shall be limited to registered nurses who are trained as nurse midwives pursuant to regulations jointly promulgated by the State Board of Nursing and the State Board of Medicine under the authority of § 54-274. Subject to the regulations of the State Board of Health, the permits of midwives who are not registered nurses and who have been previously licensed under this article shall be renewed on a biennial basis.

Reviser's Note: Source § 32-167.7.

Article 5.

Emergency Medical Service Vehicles.

§ 32.1-148. Definitions.–As used in this article:

1. "Agency" means any person engaged in the business, service or regular activity, whether or not for profit, of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless or of rendering immediate medical care to such persons.

2. "Emergency medical service vehicle" means any privately or publicly owned vehicle, vessel or aircraft that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated to provide immediate medical care to or to transport persons who are sick, injured, wounded or otherwise incapacitated or helpless.

Reviser's Note: Source § 32-310.1. The definition of "emergency medical service vehicle" was substituted for that of "ambulance" and was altered to include the words "vessel" and "aircraft" in order to make clear the intent to encompass aircraft and watercraft. Added is the provision regarding medical care. The definition of "agency" is new.

§ 32.1-149. Exemptions from operation of article.—The following are exempted from the provisions of this article:

1. Emergency medical service vehicles based outside this Commonwealth, except that any such vehicle receiving a person who is sick, injured, wounded, incapacitated or helpless within this Commonwealth for transportation to a location within this Commonwealth shall comply with the provisions of this article;

2. Emergency medical service vehicles owned and operated by the United States government.

Reviser's Note: Source § 32-310.6.

§ 32.1-150. Permit required.—A. No person shall operate, conduct, maintain or profess to be an agency without a valid permit issued by the Commissioner for such agency and for each emergency medical service vehicle used by such agency.

B. The Commissioner shall issue an original or renewal permit for an agency or emergency medical service vehicle which meets all requirements set forth in this article and in the regulations of the Board upon application upon forms and according to procedures established by the Board. Permits shall be valid for a period specified by the Board, not to exceed two years.

C. The Commissioner may issue temporary permits for agencies or emergency medical service vehicles not meeting required standards valid for a period not to exceed sixty days when the public interest will be served thereby.

D. The issuance of a permit hereunder shall not be construed to authorize any agency to operate any emergency medical service vehicle without a franchise or permit in any county or municipality which has enacted an ordinance pursuant to § 32.1-156 making it unlawful to do so.

Revisr's Note: Source § 32-310.1.

§ 32.1-151. Regulations.—A. The Board shall prescribe by regulation:

1. Requirements as to record keeping, supplies, operating procedures and other agency operations.

2. Sanitation and maintenance requirements for emergency medical service vehicles and their medical supplies and equipment.

B. The Board shall classify agencies and emergency medical service vehicles by type of service rendered and shall specify the medical equipment, the supplies, the vehicle specifications and, except as provided in § 32.1-154, the personnel required for each classification.

C. In formulating its regulations the Board shall consider the current Minimal Equipment List for Ambulances adopted by the Committee on Trauma of the American College of Surgeons.

Reviser's Note: Source § 32-310.3. See also § 32-310.4. The penultimate subsection is new.

§ 32.1-152. Inspections.—Each agency and each emergency medical service vehicle for which a permit has been issued shall be inspected as often as the Commissioner deems necessary and a record thereof shall be maintained. Each such agency and vehicle, its medical supplies and equipment and the records of its maintenance and operation shall be open at all reasonable times to such inspection.

Reviser's Note: Sources §§ 32-310.3(c) and 32-310.1(e).

§ 32.1-153. Certification of emergency medical care attendants.—A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical care attendants.

B. Each person desiring certification as an emergency medical care attendant shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application the Commissioner shall cause the applicant to be examined and if the Commissioner determines that

the applicant meets the requirements of such regulations, the Commissioner shall issue a certificate to the applicant. An emergency medical care attendant certificate so issued shall be valid for a period not to exceed two years and may be renewed after successful reexamination of the holder. Any certificate so issued may be suspended at any time it is determined that the holder no longer meets the qualifications prescribed for such attendants.

C. The Commissioner may issue a temporary certificate with or without examination when the Commissioner finds that such will be in the public interest. A temporary certificate shall be valid for a period not exceeding ninety days.

Reviser's Note: Source § 32-310.4. It is proposed that certain licensure duties be shifted from Board to Commissioner.

§ 32.1-154. When certified emergency medical care attendant required.—A person possessing a valid emergency medical care attendant certificate issued by the Commissioner shall accompany the patient or victim in the patient or victim compartment of an emergency medical service vehicle transporting such patient or victim for emergency care.

Reviser's Note: Source § 32-310.4.

§ 32.1-155. Revocation and suspension of permits.— Whenever an agency or an emergency medical service vehicle owned or operated by an agency is in violation of any provision of this article or any applicable regulation, the Commissioner shall have power to revoke or suspend such agency's permit and the permits of all emergency medical service vehicles owned or operated by the agency.

Reviser's Note: Source § 32-310.7. A penalty provision was deleted in favor of the overall penalty section in Article 4, Chapter 1. A "grandfather" clause was deleted.

§ 32.1-156. Powers of governing bodies of counties, cities and towns.—A. Upon finding as fact, after notice and public hearing, that exercise of the powers enumerated below is necessary to assure the provision of adequate and continuing emergency services and that exercise of the powers enumerated below is necessary to preserve, protect and promote the public health, safety and general welfare, the governing body of any county or city is hereby empowered to:

1. Enact an ordinance making it unlawful to operate emergency medical service vehicles or any class thereof established by the Board in such county or city without having been granted a franchise or permit to do so;

2. Grant franchises or permits to agencies based within or without the county or city; provided, that any agency in operation in any county or city on June twenty-eight, nineteen hundred sixty-eight, that continues to operate as such up to and including the effective date of any ordinance adopted pursuant to this section and that submits to the governing body of any such county or city evidence satisfactory to it of such continuing operation shall be granted a franchise or permit by the governing body of such county or city to serve at least that part of such county or city in which such agency has continuously operated if all other requirements of this article are met;

3. Limit the number of emergency medical service vehicles to be operated within the county or city and by any agency;

4. Determine and prescribe areas of franchised or permitted service within the county or city;

5. Fix and change from time to time reasonable charges for franchised or permitted services;

6. Set minimum limits of liability insurance coverage for emergency medical service vehicles;

7. Contract with franchised or permitted agencies for transportation to be rendered upon call of a county or municipal agency or department and for transportation of bona fide indigents or persons certified by the local board of public welfare or social services to be public assistance recipients;

8. Establish other necessary regulations not inconsistent with statutes or regulations of the Board relating to operation of emergency medical service vehicles.

B. In addition to the powers set forth above, the governing body of any county or city is hereby authorized to provide, or cause to be provided, services of emergency medical service vehicles, to own, operate and maintain emergency medical service vehicles, to make reasonable charges for use of emergency medical service vehicles, and to contract with any agency for the services of its emergency medical service vehicles.

C. Any incorporated town may exercise, within its corporate limits only, all those powers enumerated in subsections A. and B. of this section either upon the request of a town to the governing body of the county wherein the town lies and upon the adoption by the county governing body of a resolution permitting such exercise, or after one hundred eighty days' written notice to the governing body of the county if the county is not exercising such powers at the end of such one hundred eighty day period.

D. No county ordinance enacted, or other county action taken, pursuant to powers granted herein shall be effective within an incorporated town in such county which is at the time exercising such powers until one hundred eighty days after written notice to the governing body of the town.

E. Nothing herein shall be construed so as to authorize any county to regulate in any manner emergency medical service vehicles owned and operated by a town or to authorize any town to regulate in any manner emergency medical service vehicles owned and operated by a county.

F. Any emergency medical service vehicles operated by a city, county or town under authority of this section shall be subject to the provisions of §§ 32.1-148 through 32.1-155 and to the regulations of the Board adopted thereunder.

Reviser's Note: Source § 32-310.8. Cities were added in subsection A. 4.

Article 6.

Home Health Agency Licensing.

Reviser's Note: Minor changes are proposed to bring this new act in conformity with the general format of proposed Title 32.1. Deleted are the penalty and enforcement provisions, which are consolidated in Chapter 1.

§ 32.1-157. Definitions.—As used in this article:

A. "Home health agency" means a public or private agency or organization, whether operated for profit or not for profit, which provides skilled nursing services and at least one additional home health service at a patient's residence according to a plan of treatment but shall not include any hospital or nursing home licensed pursuant to Article 1 of this chapter.

B. "Home health service" means any of the following items and services provided on a visiting or hourly basis in the patient's residence:

1. part-time or intermittent skilled nursing care;

2. physical, occupational or speech therapy;

3. medical social services;

4. part-time or intermittent services of a home health aide; and

5. medical supplies, other than drugs and medicines, and medical appliances.

C. "Patient's residence" means the place where the patient makes his home, such as his own

apartment or house, a relative's home or a home for the aged, but shall not include a hospital, nursing home or other extended care facility.

D. "Person" includes any partnership, corporation, association or other legal entity, public or private.

E. "Plan of treatment" means a plan written, signed and reviewed at least every two months by the patient's physician prescribing items and services for the patient's condition.

Reviser's Note: Source § 32-439.

§ 32.1-158. Exemptions from article.—The provisions of this article shall not be applicable to:

1. A natural person, acting alone, who provides home health services to a patient on an individual basis if such person is licensed to provide such services pursuant to Title 54 of this Code.

2. A home health agency conducted by and for the adherents of any well-recognized church or religious denomination which provides care and treatment for the sick by spiritual means in accordance with the religious tenets of such church or denomination.

Reviser's Note: Source § 32-440.

§ 32.1-159. Licenses required; renewal thereof.—A. No person shall establish or operate a home health agency without a license issued pursuant to this article.

B. The Commissioner shall issue or renew a license to establish or operate a home health agency upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the home health agency is in compliance with the provisions of this article and regulations of the Board.

C. Every such license shall expire on the anniversary of its issuance or renewal.

D. The activities and services of each applicant for issuance or renewal of a home health agency license shall be subject to an inspection or examination by the Commissioner to determine if the home health agency is in compliance with the provisions of this article and regulations of the Board.

E. No license issued pursuant to this article may be transferred or assigned.

Reviser's Note: Source § 32-441.

§ 32.1-160. Inspections.—The Commissioner may cause each home health agency licensed under this article to be periodically inspected at reasonable times.

Reviser's Note: Source § 32-442.

§ 32.1-161. Board to prescribe regulations.—The Board shall prescribe such regulations governing the activities and services provided by home health agencies as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, the qualifications and supervision of licensed and nonlicensed personnel, the provision and coordination of treatment and services provided by the agency, clinical and business records kept by the agency, utilization and quality control review procedures and arrangements for the continuing evaluation of the quality of care provided.

Reviser's Note: Source § 32-443.

§ 32.1-162. Revocation or suspension of license.—A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon

application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

Reviser's Note: Source § 32-444.

CHAPTER 6.

ENVIRONMENTAL HEALTH SERVICES.

Article 1.

Sewage Disposal.

Reviser's Note: This new article generally displaces § 32-9 and more precisely defines the scope of the responsibilities of the State Board of Health governing sewage disposal. This proposed article more accurately reflects the actual program administered by the State Department of Health over sewage disposal than does § 32-9.

§ 32.1-163. Definitions.—As used in this article, unless the context clearly requires a different meaning:

1. "Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

2. "Sewage" means water-carried and non-water carried human excrement together with such kitchen, laundry, shower, bath, lavatory, underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

3. "Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

4. "Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

5. "Transportation" means the vehicular conveyance of sewage.

6. "Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

Reviser's Note: The definition of "owner" would expand the regulatory responsibility of the Board to include the Commonwealth.

§ 32.1-164. Powers and duties of the Board.—A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment and disposal of sewage, all sewerage systems and treatment works as they affect the public health and welfare. The

regulation of sewage, as it may affect the public health, shall be primarily the responsibility of the Board and, in cases to which the provisions of Chapter 3.1 of Title 62.1 of the Code of Virginia are applicable, the joint responsibility of the Board and the State Water Control Board in accordance with such chapter.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

(a) public and private wells supplying water for human consumption

(b) lakes and other impounded waters

(c) streams and rivers

(d) shellfish waters

(e) groundwaters

(f) areas and places of human habitation

(g) property lines.

6. Standards as to the adequacy of an approved water supply and the siting of wells prior to the issuance of a septic tank permit, provided that no permit shall be required for the installation of private wells.

7. Standards governing the transportation of sewage.

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

§ 32.1-165. Prior approval required before issuance of a building permit.—No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building.

Reviser's Note: Source § 32-9.

§ 32.1-166. State-federal agreements.—The Board may enter into an agreement with any appropriate federal agency to regulate and monitor the collection, transportation, conveyance, treatment and disposal of sewage from common carriers or at federal facilities pursuant to the

Public Health Service Act, United States Public Law 78-410, and any other applicable federal law.

Article 2.

Public Water Supplies.

Reviser's Note: The present public water supply chapter, (§ 62.1-45 et seq.) has been extensively revised and reorganized to form this article. Certain enforcement provisions have been placed in the enforcement article of Chapter 1 of proposed Title 32.1.

§ 32.1-167. Definitions.—As used in this article, unless the context clearly requires a different meaning:

1. "Aesthetic standards" means water quality standards which involve those physical, biological and chemical properties of water that adversely affect the palatability and consumer acceptability of water through taste, odor, appearance or chemical reaction.

2. "Domestic use" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

3. "Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under the Code of Virginia, including departments, divisions, boards or commissions.

4. "Owner" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity or the federal government, which supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

5. "Pure water" means water fit for human consumption and domestic use (i) which is sanitary and normally free of minerals, organic substances and toxic agents in excess of reasonable amounts and (ii) which is adequate in quantity and quality for the minimum health requirements of the persons served.

6. "Water supply" means water taken into a waterworks from wells, streams, springs, lakes and other bodies of surface water, natural or impounded, and the tributaries thereto, and all impounded groundwater but does not include any water above the point of intake of such waterworks.

7. "Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least fifteen connections or (iii) an average of twenty-five individuals for at least sixty days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Reviser's Note: Source § 62.1-45. The Commonwealth is proposed to be added to the definition of "governmental entity" (presently "municipal corporation"). Rewritten are definitions 5 and 7. Definition 1 is new. Please see § 32.1-170.

§ 32.1-168. Exemptions.—The provisions of this article shall not be applicable to a waterworks which meets all of the following conditions:

1. the waterworks consists only of distribution and storage facilities and does not have any collection or treatment facilities;

2. the waterworks obtains all of its water from, but is not owned or operated by, a waterworks to which this article is applicable;

3. the waterworks does not sell water to any person; and

4. the waterworks is not a carrier which conveys passengers in interstate commerce.

Reviser's Note: New section.

§ 32.1-169. Supervision by Board.—The Board shall have general supervision and control over all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological and physical quality of waters furnished for drinking or domestic use may affect the public health and welfare and may require that all water supplies be pure water.

Reviser's Note: Source § 62.1-46.

§ 32.1-170. Regulations of Board.—The regulations of the Board governing waterworks, water supplies and pure water shall be designed to protect the public health and promote the public welfare and shall include criteria and procedures to accomplish these purposes.

The regulations may include, without limitation:

1. requirements and procedures for the issuance of permits required by this article;

2. minimum health and aesthetic standards for pure water;

3. minimum standards for the quality of water which may be taken into a waterworks;

4. criteria for the siting, design and construction of water supplies and waterworks;

5. requirements for inspections, examinations and testing of raw or finished water;

6. a requirement that owners submit (1) regular samples of water for bacteriological, chemical, radiological, physical or other tests, or (2) the results of such tests from such laboratory as may be acceptable to the Commissioner;

7. requirements for record keeping and reporting; and

8. such other provisions as may be necessary to guarantee a supply of pure water.

Reviser's Note: Sources §§ 62.1-47, 62.1-48 and 62.1-51. This section has been rewritten. The provision for health and aesthetic standards is new.

§ 32.1-171. Technical assistance as to sources and purity.—The Commissioner shall, upon request and without charge, provide technical assistance to owners regarding the most appropriate source of water supply and the best method of assuring pure water, but the Commissioner shall not prepare plans, specifications or detailed estimates for such owners.

Reviser's Note: Source § 62.1-49.

§ 32.1-172. Permit from Commissioner.—A. No owner shall establish, construct or operate any waterworks or water supply in this Commonwealth without a written permit from the Commissioner.

B. The application for such a permit shall comply with regulations of the Board and shall be accompanied by a certified copy of the maps, plans and specifications for the construction of such waterworks, a description of the source or sources from which it is proposed to derive the water supply and the manner of storage, purification or treatment proposed for the water supply prior to its delivery to consumers.

C. The permit may state the permitted capacity of the waterworks, the permitted source or sources of the water supply, the permitted manner of storage, purification and treatment for the water supply and such other conditions as the Commissioner may deem necessary to afford a supply of pure water.

D. Except as may be provided by regulation of the Board, no other source of water supply shall subsequently be used for any such waterworks, nor shall any change in the manner of storage, purification and treatment of the water supply be made without obtaining an additional or amended permit.

E. Whenever application shall be made to the Commissioner for a permit, he shall examine the application and, as soon as practicable thereafter, shall issue the permit if, in his judgment, the proposed waterworks will furnish pure water. If the proposed waterworks is not in compliance with all regulations of the Board but, in the opinion of the Commissioner, the public health will not be jeopardized, the Commissioner may issue a temporary permit for such period of time and subject to such conditions as the Commissioner may deem appropriate for the owner to achieve compliance with such regulations.

F. No permit shall be assigned or transferred.

Reviser's Note: Sources §§ 62.1-50 and 62.1-56. This revised section is made applicable to extensions of distribution pipes. Subsections C. and F. are new. The exception in D. is new. The last sentence in E. is new. See also § 62.1-55.

§ 32.1-173. Additional and amended permits.—A. Any owner intending to make changes, alterations or improvements to a waterworks for which a permit has been granted shall apply to the Commissioner for an additional or amended permit in a manner precribed by regulations of the Board. The Commissioner shall review and act upon the application in the manner set forth in § 32.1-172.

B. The Comissioner may, on his own motion, amend any permit whenever he determines that:

1. the existing permit is no longer valid;

2. changes, alterations, or improvements to the waterworks are necessary to provide an adequate supply of pure water; or

3. a change has occurred in the manner of storage or treatment or the source of the water supply.

Reviser's Note: Source (3.) - § 62.1-55(b). See also § 62.1-53. Much of this section is new.

§ 32.1-174. Revocation of permits.—The Commissioner may revoke any permit issued pursuant to this article whenever he determines that:

1. the waterworks can no longer be depended upon to furnish pure water; or

2. the capacity of the waterworks is inadequate for the purpose of furnishing pure water; or

3. the owner has failed to abide by an order issued by the Commissioner; or

4. the owner has abandoned the waterworks and discontinued supplying pure water.

Reviser's Note: Sources §§ 62.1-53 and 62.1-55.

§ 32.1-175. Emergency orders of Commissioner.—A. The Commissioner may issue emergency orders in any case where there is an imminent danger to the public health and welfare resulting from the operation of any waterworks or the source of a water supply. The Commissioner may order the immediate cessation of the operation of any waterworks or the use of any water supply or the correction of any condition causing the production or distribution of any water constituting an imminent danger to the public health and welfare. Emergency orders shall be effective for a period determined by the Commissioner.

B. An emergency order issued by the Commissioner may be appealed to the circuit court of the county or city where the alleged emergency exists, but an emergency order shall not remain in force pending an appeal unless the Commissioner satisfies the court that the public health and welfare is or will be in danger pending the final disposition of the appeal.

Reviser's Note: Source § 62.1-62.

§ 32.1-176. Civil penalty.—In addition to the provisions of § 32.1-27, any owner who violates any provisions of this article or any order or regulation adopted pursuant thereto shall, upon such

finding by a court of competent jurisdiction, be assessed a civil penalty of not more than five thousand dollars for each day of such violation. All penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth.

Reviser's Note: Source § 62.1-59. This provision is necessary for state primacy under the Federal Safe Drinking Water Act, P.L. 93-523 (42 U.S.C. 300 f.).

Article 3.

Solid and Hazardous Waste Management.

Reviser's Note: This article generally replaces §§ 32-9.1 and 32-9.2. It broadens and more sharply defines the regulatory responsibility of the State Board of Health with respect to solid and hazardous waste. Some of this expansion is made necessary by the adoption of the federal Resource Conservation and Recovery Act (RCRA, P.L. 94-580). RCRA propels the federal government into solid and hazardous waste regulation on a massive scale. RCRA authorizes the United States Environmental Protection Agency (EPA) to regulate every phase of hazardous waste management and to provide technical and financial assistance to states in carrying out their traditional solid waste regulatory responsibilities. EPA is authorized to delegate its regulatory responsibilities to states which have hazardous waste management regulatory programs which meet certain criteria set out in RCRA. This statute is designed to allow Virginia to receive a full delegation of responsibility from EPA over hazardous waste management activities in the Commonwealth. If Virginia does not receive such a delegation from EPA, hazardous waste management activities in Virginia will be directly controlled by EPA and Virginia will lose substantial federal financial and technical assistance for its solid waste program.

§ 32.1-177. Definitions.—As used in this article unless the context clearly requires a different meaning:

1. "Disposal" means the incineration or discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

2. "Federal acts" means United States Public Law 94-580, entitled the Resource Conservation and Recovery Act, any other acts of Congress providing federal funds for solid and hazardous waste management and any subsequent amendment to such Act or acts.

3. "Hazardous waste" means a solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

4. "Hazardous waste generation" means the act or process of producing hazardous waste.

5. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

6. "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage of such hazardous waste.

7. "Open dump" means a site on which any solid waste or hazardous waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or so as to create a reasonable probability of adverse effects on the public health or the environment, including the pollution of air, land, surface water or groundwater.

8. "Person" includes, in addition to the entities enumerated in paragraph 4. of § 32.1-3, a governmental body and municipal corporation.

9. "Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption and utilization of recovered resources.

10. "Resource recovery" means the recovery of material or energy from solid waste.

11. "Resource recovery system" means a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

12. "Sanitary landfill" means a disposal facility for solid or hazardous waste so located, designed and operated that it does not create a reasonable probability of adverse effects on the public health or the environment, including pollution of air, land, surface water or groundwater.

13. "Sludge" means any solid, semisolid or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

14. "Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations and from community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

15. "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of solid waste or resource recovery.

16. "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

Reviser's Note: This section defines various technical terms used throughout the article. These definitions are coordinated with definitions found in RCRA.

§ 32.1-178. Powers and duties of Board.—The Board is responsible for carrying out the purposes and provisions of this article and compatible provisions of federal acts and is authorized to:

1. Exercise general supervision and control over solid and hazardous waste management activities in this State.

2. Provide technical assistance and advice concerning all aspects of solid and hazardous waste management.

3. Develop and keep current a State solid and hazardous waste management plan and provide technical assistance and advice or other aid for the development and implementation of local or regional solid and hazardous waste management plans.

4. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

5. Collect such data and information as may be necessary to conduct the State solid and hazardous waste program, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed of and resource recovery.

6. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain such records, manifest and reporting system as may be prescribed by the Board.

7. Designate classes, types or lists of waste which it deems to be hazardous.

8. Consult and coordinate with the heads of any other appropriate State and federal agencies, any appropriate independent regulatory agencies and any other appropriate governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this article while imposing the least burden of duplicative requirements on those persons subject to the provisions of this article.

9. Make application for such federal funds as may become available under federal acts and to transmit such funds when applicable to any appropriate person.

10. Appoint such advisory committees as it may deem needed to aid in the development of an effective solid and hazardous waste management program.

11. Promulgate such regulations as may be necessary to carry out its powers and duties and the intent of this article and the federal acts.

§ 32.1-179. Permits.—A. No person shall operate any sanitary landfill or other facility for the disposal of solid waste without a permit therefor from the Commissioner. The Commissioner may, in his discretion, waive the requirement for a permit when he determines that the facility for the disposal of solid waste is subject to regulation by the State Water Control Board.

B. No person shall generate, transport, store, provide treatment for, or dispose of a hazardous waste without a permit therefor from the Commissioner on and after the effective date of regulations of the Board governing such permits. Any person carrying out such an activity shall report to the Commissioner, by such date as the Board specifies by regulation, the following: (i) his name and address, (ii) the name and nature of the hazardous waste, and (iii) the fact that he is generating, transporting, storing, providing treatment for or disposing of a hazardous waste.

C. No person except a holder of a conditional permit provided for in this subsection shall own, operate or allow to be operated on his property an open dump. The Commissioner may issue a conditional permit for the operation of any open dump in use or being operated on October one, nineteen hundred seventy-nine. Each such conditional permit shall specify either:

1. a schedule for closure of the open dump or

2. a schedule delineating appropriate remedial action which will lead to conversion of the open dump into a sanitary landfill.

In no event shall any such schedule extend beyond June thirty, nineteen hundred eighty-three, and no conditional permit shall be valid after June thirty, nineteen hundred eighty-three. The Commissioner may revoke any conditional permit and order the closure of any open dump for failure to comply with the schedule specified in the conditional permit for such open dump or for any reason set forth in § 32.1-180.

D. Any permit may contain such conditions or requirements as the Commissioner deems necessary for the protection of the public health and the environment.

Reviser's Note: This section establishes a permit requirement for operators of solid and hazardous waste treatment facilities. It further establishes a conditional permit procedure for the eventual closure of open dumps.

§ 32.1-180. Revocation or amendment of permits.—A. Any permit issued by the Commissioner pursuant to this article may be revoked when any of the following conditions exist:

1. The permit holder violates any regulation adopted pursuant to this article.

2. The sanitary landfill, open dump or other facility used for disposal of solid waste is

maintained or operated in such a manner as to pose an actual or potential danger to the public health or the environment.

3. The sanitary landfill, open dump or other facility used for the disposal of solid waste, because of its location, construction or lack of protective construction or measures to prevent pollution, poses an actual or potential danger to the public health or environment.

4. Leachate or residues from the sanitary landfill, open dump or other facility used for the disposal of solid waste pose a threat of contamination or pollution of the air, surface waters or groundwater thereby endangering the public health and the environment.

5. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted or ceases to engage in the activity permitted or otherwise fails to provide any service permitted.

6. The facilities used in the generation, transportation, storage, treatment or disposal of hazardous waste are operated, located, constructed or maintained in such a manner as to pose a reasonable probability of adverse effects on the public health or the environment, including pollution of air, land, surface water or ground water.

7. Such protective construction or equipment as may be necessary to protect the public health and welfare or the environment has not been installed at a facility used for the storage, treatment or disposal of a hazardous waste.

B. The Commissioner may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment.

2. There is a reasonable possibility of pollution of or adverse effects on the air, land, surface water or groundwater.

3. Investigation has shown the need for additional equipment, construction, procedures and testing to insure the protection of the public health and the environment.

C. If the Commissioner finds that solid or hazardous wastes are no longer being stored, treated or disposed of at a facility in accordance with Board regulations, the Commissioner may revoke the permit issued for such facility or, as a condition to granting or continuing in effect a permit, may require the person to whom the permit was issued to enter into an agreement with the Commissioner that such person will provide perpetual care and surveillance of the facility.

§ 32.1-181. Bonds.—A. The Commissioner may require any person holding or applying for a permit issued pursuant to this article to post a bond, with surety approved by the Commissioner, payable to the county, city or town in which the facility for the disposal of solid waste or the facility where hazardous waste is generated, stored, treated or disposed is located. Such bond shall be forfeited to such county, city or town when the public health and safety is endangered due to the abandonment by such person of such facility. The county, city or town in which such facility is located shall expend such forfeited bond as necessary to restore and maintain such facility in a safe condition.

B. The amount of each bond shall be based upon the potential for contamination and injury by the solid or hazardous waste, the cost of disposal of the solid or hazardous waste and the cost of restoring the facility to a safe condition.

C. No State, local or other governmental agency shall be required to post a bond.

D. Forfeiture of such bond shall not relieve any permittee of any other legal obligations for the consequences of abandonment of any facility for the disposal of solid waste or a facility where hazardous waste is generated, stored, treated or disposed.

§ 32.1-182. Solid waste management.—The Governor may designate regional boundaries for solid waste management. In the designation of such boundaries, the Governor shall consider urban

concentrations, geographic conditions, markets and other factors as may be appropriate for carrying out regional solid waste management. The governing bodies of the counties, cities and towns within any region so designated shall be responsible for the development of a comprehensive regional solid waste management plan in cooperation with any planning district commission or commissions in such region. Each regional solid waste management plan shall include all aspects of solid waste management. The governing body of each county, city or town shall be responsible for insuring, within its jurisdictional boundaries, the implementation of those portions of the regional solid waste management plan applicable to such county, city or town. Until such date as a county, city or town becomes subject to a regional solid waste management plan, such county, city or town shall be responsible for implementation of a local solid waste management plan which meets such standards as may be prescribed by the Board by regulation.

If a county levies a consumer utility tax and the ordinance provides that revenues derived from such source, to the extent necessary, be used for solid waste disposal, the county may charge a town or its residents, establishments and institutions an amount not to exceed their pro rata cost, based upon population for such solid waste management if the town levies a consumer utility tax.

Reviser's Note: This section authorizes the Governor to designate solid waste management regions. It further requires the governing bodies of local governments within any region to develop a comprehensive regional solid waste management plan. It requires the governing body of each local government within a region to implement those portions of the regional plan applicable locally. The second paragraph is retained from present § 32-9.1.

§ 32.1-183. Perpetual care, bond, security or insurance may be required.—When a hazardous waste poses a reasonable probability of adverse effects on the public health or the environment, any person who generates, transports, stores, treats or disposes of such waste may be required to provide perpetual care and surveillance or, except in the case of a State or local governmental agency, provide such bond, security or insurance as the Commissioner deems appropriate.

Reviser's Note: This section authorizes the Commissioner to require persons who generate, transport, store, treat or dispose of hazardous wastes to provide perpetual care and surveillance of such waste or, in the alternative, to provide a bond.

§ 32.1-184. Contracts by counties, cities and towns.—Any county, city or town may enter into contracts for the supply of solid waste to resource recovery facilities.

Reviser's Note: This provision is a prerequisite to EPA approval for the state solid waste plan.

§ 32.1-185. State aid to localities for solid waste disposal.—A. To assist it in the collection, transportation, disposal and management of solid waste in accordance with federal and State legislation, regulations and procedures, each county, city and town may receive for each fiscal year from the general fund of the State Treasury such sums as are appropriated for such purposes. The Commissioner shall distribute such grants on a quarterly basis, in advance, in accordance with regulations adopted by the Board, to those counties, cities and towns which submit applications therefor.

B. Any county, city or town applying for and receiving such funds shall utilize the funds only for the collection, transportation, disposal or management of solid waste. The Commissioner shall cause the use and expenditure of such funds to be audited and all funds not used for the specific purposes stated herein shall be refunded to the general fund.

C. All funds granted under the provisions of this section shall be conditioned upon and subject to the satisfactory compliance by the county, city or town with applicable federal and State legislation and regulations. The Commissioner may conduct periodic inspections to ensure satisfactory compliance.

Reviser's Note: Source § 32-9.2. This section is proposed to be broadened to cover towns.

§ 32.1-186. Civil penalty.—In addition to the provisions of § 32.1-27, any person who violates any provision of this article or any regulation or order of the Board adopted pursuant to this article shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than five thousand dollars for each day of such violation. All penalties under this section

shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth.

Reviser's Note: This section authorizes the imposition of civil penalties of up to $5,000 per day for violation of this article, regulations or orders of the Board. It is necessary that this provision be included in this article in order that the state may obtain EPA designation for its state solid and hazardous waste management plans. The provisions contained in Article 4, Chapter 1, for the imposition of a $10,000 per day penalty for violation of a court order requiring compliance with the statute, regulations or orders will be inadequate for obtaining state designation.

Article 4.

Mosquito Control Districts.

Reviser's Note: This article has been generally rewritten.

§ 32.1-187. Counties, cities and towns may create mosquito control districts.—The governing body of any county, city or town, either alone or jointly with one or more other counties, cities or towns, may create one or more mosquito control districts. A mosquito control district may comprise the whole or any part of the county, city or town or combination thereof creating such district, except that no mosquito control district in a county shall include the territory within an incorporated town within such county except by agreement with such town.

Reviser's Note: Source § 32-379.

§ 32-.1-188. Consolidation of districts.—The governing body of any city which has established more than one mosquito control district pursuant to § 32.1-187 may, by ordinance, consolidate such districts under a single commission which shall function under the health department of the city.

Reviser's Note: Source § 32-379.1. Proposed to be deleted are certain requirements for consolidation.

§ 32.1-189. Mosquito control commission; composition; appointment of members.—Each mosquito control district shall be administered by a commission of three members, one of whom shall be the Commissioner or his designee. The Commissioner or his designee shall serve as chairman of each such commission. Where a mosquito control district consists of territory wholly within one political subdivision, the governing body of that political subdivision shall appoint the other two members of the commission; where a mosquito control district shall consist of territory in two political subdivisions, the governing body of each such political subdivision shall appoint one member; and where any mosquito control district shall by agreement between political subdivisions consist of territory lying within more than two political subdivisions, the remaining two members of the commission for that district shall be appointed by the Commissioner from the residents of such district.

Reviser's Note: Source § 32-380.

§ 32.1-190. Powers of commission; oath and terms of members; vacancies.—Each mosquito control commission district shall be a body politic and corporate and shall have all the powers necessary to carry into effect all of the provisions of this article. Each member of any such commission shall take and subscribe to the oath prescribed by § 49-1. The term of each commission member other than the Commissioner of his designee shall be four years and thereafter until his successor has been duly appointed and qualified. A vacancy other than by expiration of term shall be filled for the unexpired term by the authority originally making the appointment.

Reviser's Note: Source § 32-381.

§ 32.1-191. Secretary of commission.—A mosquito control commission shall appoint its secretary either from the membership of such commission or otherwise and shall fix his compensation. The commission may require bond of its secretary in excess of the funds which may come into his hands and conditioned upon the faithful application of such funds.

Reviser's Note: Source § 32-382.

§ 32.1-192. Further powers of commission.—Each mosquito control commission is empowered to employ all necessary personnel and to perform all acts necessary to control and eliminate mosquitoes in the district but such actions shall be subject to private property rights in the areas in which the work of the Commission is performed.

Reviser's Note: Source § 32-383.

§ 32.1-193. Eminent domain.—Each mosquito control commission is vested with the power of eminent domain to the extent necessary to carry out the provisions of this article. Condemnation proceedings shall be instituted and conducted in the name of the mosquito control commission for the district in which such property is located or the district for which its acquisition is deemed necessary and shall be conducted as prescribed by Title 25 of the Code of Virginia.

Reviser's Note: Source § 32-384.

§ 32.1-194. Special tax authorized.—The governing body of any county, city or town, the whole or a part of whose territory is contained within a mosquito control district, is hereby authorized and empowered to levy annually a special tax upon all real and personal property subject to local taxation within the territory located within such county, city or town which is a part of such mosquito control district of not exceeding twenty-five cents per one hundred dollars of assessed valuation thereof, and all funds received from any tax levy so made shall be paid to the mosquito control commission for the mosquito control district in which the property subject to such levy is, and shall be expended by such mosquito control commission for the purposes authorized by this article.

Reviser's Note: Source § 32-385.

§ 32.1-195. Contributions from Board.—The Board is hereby authorized to contribute annually to any mosquito control commission a sum not more than twenty-five percent of the gross amount obtained by such commission annually from any special tax levy authorized by this article or contributed to such commission annually by direct appropriation of any county, city, town or combination thereof, but any such amount so contributed by the Board shall not exceed ten thousand dollars in any one year; except that where separate mosquito control commissions have been consolidated pursuant to § 32.1-188, such maximum amount shall be computed so as to allow a contribution to that consolidated district in an amount not less than was received prior to such consolidation by all of the separate districts.

Reviser's Note: Source § 32-386.

§ 32.1-196. Disposition of funds not needed for mosquito control.—Whenever funds accumulated by a mosquito control district are determined by the commission for such district to be no longer needed for the control of mosquitos, such commission may transfer such funds as follows: (1) funds contributed by the Board, to the State treasury, (2) funds contributed by a county, city or town, to the treasury of such county, city or town, and (3) funds contributed by levy of a special tax upon property, to the treasury of the county, city or town wherein such property lies.

Reviser's Note: Source § 32-386.1.

§ 32.1-197. Compensation and expenses of members of commission.—The members of any mosquito control commission shall receive no salary for their services as such but shall receive necessary expenses incurred while actually engaged in discharge of their duties, to be paid out of the funds under the control of such commission; provided, however, that if any member shall be appointed secretary for his commission he may be paid, and shall be entitled to receive, such compensation as the commission may determine.

Reviser's Note: Source § 32-387.

Article 5.

Service Stations and Public Gathering Places.

Reviser's Note: Cumbersome and antiquated language in this article has been updated. The definition of a "public gathering place" is new, especially as it pertains to festivals, fairs, races and certain other places. It has its genesis in the need for provision and regulation of toilet facilities at large public gatherings, which may be held indoors or outdoors. Inspection, penalty and appeals sections have been deleted in favor of title-wide provisions.

§ 32.1-198. Definitions.—As used in this article:

1. "Service station" means an establishment whose principal business is selling or offering for sale gasoline, oil and automobile accessories;

2. "Public gathering places" includes, but is not limited to:

(a) historic shrines;

(b) terminals of public transportation companies;

(c) festivals, fairs, races and other places where one hundred or more people congregate at one time.

Reviser's Note: Source § 32-63(1). The definition of "service station" is enlarged. Subsection 2(c) is new.

§ 32.1-199. Exemptions.—This article shall not apply to the neighborhood type grocery and hardware store which, for the convenience of local patrons, maintains a gasoline dispensing service.

Reviser's Note: Source § 32-63(2).

§ 32.1-200. Regulations.—The Board may adopt such regulations governing toilet facilities, sewage disposal facilities and water supply facilities at service stations and public gathering places as may be necessary to protect the public health. Such regulations may include without limitation (i) a requirement that there be toilet facilities, sewage disposal facilities and water supply facilities and standards therefor; (ii) requirements that toilet facilities and all fixtures therein be kept clean and in a good state of repair; and (iii) a system of classifying service stations and public gathering places with different regulations for each such classification.

Reviser's Note: Source § 32-63. Various specific statutory provisions are deleted and grouped together here under the Board's regulatory authority.

§ 32.1-201. Free access to certain toilet facilities.—Public gathering places required by Board regulation to provide toilet facilities shall provide without charge at least one toilet for each sex.

Reviser's Note: Source § 32-63.2.

§ 32.1-202. Power of counties, cities and towns not limited.—Nothing contained in this article shall in any way limit the power of any county, city or town to regulate by ordinance sanitary conditions in service stations and public gathering places located therein, but no such ordinance may impose requirements less stringent than the regulations of the Board.

Reviser's Note: Source § 32-63(6). It is proposed that this be broadened to include counties and towns. The last proviso is new.

Article 6.

Migrant Labor Camps.

Reviser's Note: The recodification of this article has included the deletion of many of the precise requirements found in the present sections and their replacement by a general regulatory

authority in the Board.

The Virginia Migrant Labor Camp law was passed in 1962 and its purpose was to set minimum standards for the operation and construction for migrant labor camps. Since that time a federal migrant labor law has been passed and, more recently, the federal Occupational Safety and Health Administration has entered the field. The result is that in Virginia there are three sets of overlapping regulations. Principal objectives have been to minimize the differences in the regulations under which the camp owners operate and to ease the administrative burden of enforcing conflicting statutes.

It is proposed that various licensing responsibilities be shifted from the local boards of health to the Commissioner. Deleted in the draft are right of entry, enforcement and penalty provisions, which are covered generally in Chapter 1.

§ 32.1-203. Definitions.—As used in this article:

1. "Camp operator" means a person who has charge, care or control of a migrant labor camp which houses more than ten persons, one or more of whom is a migrant worker.

2. "Migrant labor camp" or "camp" means and includes one or more structures, buildings, tents, barracks, trailers, vehicles, converted buildings, and unconventional enclosures of living space, reasonably contiguous, together with the land appertaining thereto, established, operated or used as living quarters for more than ten persons, one or more of whom is a migrant worker engaged in agricultural or fishing activities, including related food processing.

3. "Migrant worker" means any individual from within or outside the Commonwealth who passes seasonally from one place to another for the purpose of employment, who is not a year-round employee and who occupies living quarters other than his permanent home during the period of such work.

4. "Applicable regulations" includes regulations of the Board adopted pursuant to this article and occupational safety and health regulations applicable to migrant labor camps adopted by the Safety and Health Codes Commission pursuant to Chapter 3 of Title 40.1 of this Code.

Reviser's Note: Source § 32-415. It is proposed that the definition of "migrant labor camp" be broadened to include those housing workers engaged in fishing.

§ 32.1-204. Notice of intention to construct, etc., camp.—Each person planning to construct, substantially remodel or enlarge for occupancy or use a migrant labor camp or any portion or facility thereof, or to convert a property for use or occupancy as a camp shall give notice in writing of his intent to do so to the Commissioner at least thirty days before the date of beginning such construction, remodeling, enlargement or conversion. The notice shall give the name of the city or county in which the property is located, the location of the property within that area, a brief description of the proposed construction, remodeling, enlargement or conversion, the name and mailing address of the person giving the notice and his telephone number, if any. Upon receipt of such notice, the Commissioner shall forward to such person a copy of this article and any applicable regulations.

Reviser's Note: Source § 32-416(a).

§ 32.1-205. Permit required.—No person shall operate or cause to be operated a migrant labor camp without a permit nor shall any person allow a migrant labor camp without a permit to be occupied and used on property owned or controlled by such person. A separate permit shall be required for each camp and shall be posted at a place in the camp readily visible and accessible to the migrant workers.

Reviser's Note: Source § 32-416(b).

§ 32.1-206. Application for permit.—Application for a permit to operate a migrant labor camp shall be made to the Commissioner at least thirty days before such camp is to be opened on a form prescribed by the Board. A separate application shall be submitted for each camp.

Reviser's Note: Source § 32-416(b).

§ 32.1-207. Inspection; issuance of permit; permits nontransferable.—If, after inspection by the Commissioner or his designee, the Commissioner finds that the camp or the proposed operation of the camp for which an application is submitted pursuant to § 32.1-206 conforms or will conform to the provisions of this article and any applicable regulations, the Commissioner shall issue a permit for the operation of the camp. A permit shall not be transferable and shall expire on December thirty-first of each year.

Reviser's Note: Source § 32-416(b).

§ 32.1-208. Provisional permits.—When the Commissioner determines that a camp for which a permit is sought does not, or the proposed operation thereof will not, comply with the provisions of this article and any applicable regulations and that the operation of the camp will not create an imminent danger to the public health and safety, the Commissioner may grant a provisional permit to operate such a camp upon such terms, requirements, or conditions as the Commissioner may prescribe until the requirements of this article and any applicable regulations are fully complied with. The term of any such provisional permit shall not exceed thirty days. No provisional permit shall be renewable.

Reviser's Note: Source § 32-416(b).

§ 32.1-209. Denial, revocation and suspension of permits.—A. The Commissioner may deny, revoke or suspend a permit for a camp when the Commissioner determines that the camp or the proposed operation thereof does not conform to or is in violation of any provision of this article or any applicable regulations.

B. A new permit shall be issued upon application therefor when the camp is in compliance with the provisions of this article and any applicable regulations.

Reviser's Note: Source § 32-416(c).

§ 32.1-210. Camp operator's responsibilities.—The camp operator shall be responsible for ensuring that the camp complies with the provisions of this article, any applicable regulations and all conditions stated in the permit issued for the camp.

Reviser's Note: Source § 32-416(d).

§ 32.1-211. Regulations governing camps.—A. The occupational, safety and health regulations of the Safety and Health Codes Commission applicable to migrant labor camps shall be no more stringent than those actually enforced by the United states Department of Labor pursuant to federal law.

B. The Board may adopt regulations governing migrant labor camps which supplement the occupational safety and health regulations adopted by the Safety and Health Codes Commission pursuant to Chapter 3 of Title 40.1 of this Code and which are necessary to protect the health of migrant workers. Such regulations may include, but need not be limited to, standards governing:

1. The sites of camps.

2. The provision of an adequate and convenient supply of pure water as defined in § 32.1-167 of this Code.

3. The disposal of sewage as defined in § 32.1-163 of this Code.

4. The storage and disposal of solid waste.

5. The maintenance of the camp grounds.

6. The construction, maintenance, alteration or remodeling of buildings and structures for the housing of migrant workers and their families, including wash and bathrooms, central cooking facilities, central dining rooms, sleeping quarters, assembly rooms, lighting and ventilation.

Reviser's Note: Sources §§ 32-417, 32-418 and 32-420.

Article 7.

Bedding and Upholstered Furniture.

Reviser's Note: Proposed changes in this article are designed to update and bring it into conformity with the nationwide program for the inspection and sale of bedding and upholstered furniture. Special attention has been given to the rewording of definitions and to clarification of the permits, requirements, procedures, etc., for licenses and registration numbers. Certain provisions for entr nce, inspection, and enforcement have been deleted in the draft in favor of the new Article 4 of Chapter 1 of proposed Title 32.1.

§ 32.1-212. Definitions.—As used in this article unless the context otherwise requires:

(1) "Bedding" means any mattress, mattress pad, box spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag, or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed substance, which can be used by any human being for sleeping or reclining purposes.

(2) "Filling Material" means cotton, wool, feathers, kapok, down, plant or vegetable fibers, or any other material or substance or combination thereof, loose or in batting, pads, or any prefabricated form, that is used or that may be used in articles of bedding or upholstered furniture.

(3) "Importer" means any person who for the purpose of manufacture or resale receives bedding, upholstered furniture or filling material from any country other than the United States.

(4) "New" means not previously used for any purpose. Manufacturing processes shall not be considered a prior use.

(5) "Sanitize" means to reduce the level of microbiological agents to a level not injurious to health.

(6) "Secondhand" means having been made prior use of or containing any filling material of which prior use has been made.

(7) "Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken or ground up.

(8) "Sterilize" means to render free of viable microbiological agents.

(9) "Upholstered furniture" means any article of furniture designed to be used for sitting, resting or reclining which is wholly or partly stuffed or filled with any filling material.

Reviser's Note: Source § 32-117. This section has been rewritten.

§ 32.1-213. Shoddy, secondhand filling material, feathers, animal hair and down to be sanitized.—No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any shoddy or any fabric from which shoddy is made or any secondhand filling material or any secondhand feathers, animal hair or down, unless such shoddy, secondhand filling material, feathers, hair or down has been sanitized by a reasonable process approved by the Commissioner.

Reviser's Note: Source § 32-118.

§ 32.1-214. New animal hair, feathers and down to be sterilized.—No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any new animal hair, new feathers or new down unless such new animal hair, new feathers or new down shall have been sterilized by a reasonable process approved by the Commissioner.

Reviser's Note: New section. Sterilization of material would be required only for new animal hair, new feathers, or new down. All other materials used in upholstering could be sanitized.

§ 32.1-215. Disposal restricted.—No person shall rent, offer or expose for sale, barter, give away, or dispose of in any other commercial manner any article of bedding or upholstered furniture made, remade, reupholstered or renovated in violation of § 32.1-213 or § 32.1-214 or any secondhand article of bedding or upholstered furniture unless since last used such secondhand article has been sanitized by a reasonable process approved by the Commissioner.

Reviser's Note: Source § 32-119.

§ 32.1-216. Permit for use of process to sanitize or sterilize.—Any person applying for approval of a process by which filling materials, bedding or upholstered furniture are sanitized or sterilized shall submit to the Commissioner a description of the process and any apparatus and method to be used in such process. Upon approval of such process by the Commissioner and payment of the current annual permit fee by the applicant, a numbered permit for use of such process shall be issued. Such permit shall expire one year from the date of issue. Nothing herein shall prevent any person from having any sanitizing or sterilization required by this article performed by any person who has a valid permit for such purposes, provided the number of such permit appears on the tag attached to each article as required by § 32.1-219.

Reviser's Note: Source § 32-120.

§ 32.1-217. License and registration number; renewal; licenses not transferable; responsibility of branch factories.—A. Every importer and every person manufacturing, renovating or reupholstering any bedding or upholstered furniture or processing or selling any filling material to be used in articles of bedding or upholstered furniture shall first obtain a license from the Commissioner for each place of business, subsidiary or branch operated by him for such purpose. Such license shall be numbered, shall expire one year from the date of issue, shall be renewable annually unless sooner revoked and shall not be transferable. Each branch, branch factory and subsidiary shall be responsible for the contents and for the tagging, as provided in this article, of items of bedding and upholstered furniture made, remade, renovated, reupholstered or imported by it and offered for sale or use in the Commonwealth.

B. The Commissioner shall assign a registration number to each licensee.

Reviser's Note: Source § 32-120.1. Importers would be required to register.

§ 32.1-218. Fees.—The Board shall set the annual fees imposed for licenses and permits issued pursuant to this article. All fees collected shall be deposited and held by the Department in a separate fund, from which shall be paid all expenditures necessary in carrying out the provisions of this article.

Reviser's Note: Source § 32-120.1.

§ 32.1-219. Tags required.—A. Every importer of and every person manufacturing a new item of bedding or upholstered furniture shall attach securely thereto a substantial white cloth tag or equivalent, visible on the outside covering of such item and not less than six square inches in size, upon which shall be plainly stamped or printed, in English, the name and address of the manufacturer, importer or distributer, the registration number of the manufacturer or importer, the kind of filling materials used therein, a statement that the filling materials are new, and the number of the permit issued to the person sterilizing any new feathers, hair or down in such item.

B. Any person sanitizing, remaking, renovating or reupholstering any secondhand item of bedding or upholstered furniture or manufacturing any item of bedding or upholstered furniture containing any shoddy or secondhand filling material shall attach securely to it a substantial yellow cloth tag or equivalent, visible on the outside of such item and not less than six square inches in size, upon which shall be stamped or printed, in English, the kind of filling materials used therein, a statement that the item or filling materials are secondhand, and the number of the permit issued to the person who sanitized such item or filling material.

C. The stamp or print on tags required by this section shall be in type not less than three

millimeters in height.

Reviser's Note: Source § 32-122.

§ 32.1-220. Same; filling material.—Any person shipping or delivering filling material, however contained, shall have conspicuously attached thereto a tag upon which shall be stamped or printed, as provided in § 32.1-219 or as provided by the regulations of the Board, the kind of material, whether the material is new or secondhand, the name, address and registration number of the manufacturer or importer and the permit number of the person who sterilized or sanitized such material.

Reviser's Note: Source § 32-122.1.

§ 32.1-221. Offenses as to tags.—A. It shall be unlawful to use any false or misleading statement, term or designation on any tag required by this article or to remove, deface or alter, or to attempt to remove, deface or alter any such tag or the statement of filling materials made thereon, prior to retail sale.

B. No person shall use or have in his possession with intent to use any tag provided for in this article unless such person holds a license or permit issued to him pursuant to this article. No person shall sell, give or in any way provide such tags to anyone who does not have a license or permit issued to him pursuant to this article.

Reviser's Note: Source § 32-125. Subsection B. is new.

§ 32.1-222. Return of improperly tagged items.—The Commissioner may order the return of any item of bedding or upholstered furniture or any filling material made, remade, renovated, reupholstered, prepared, processed, tagged or not tagged in violation of the provisions of this article to the manufacturer or importer thereof. The manufacturer or importer shall be liable to the person returning such item for the costs of crating, shipping and the invoice price to the purchaser. Failure of a manufacturer or importer to pay such costs to the person returning such item shall be grounds for revocation or suspension of a license issued pursuant to this article.

Reviser's Note: This is a new enforcement provision.

§ 32.1-223. New and sanitized items to be kept separate.—New and sanitized upholstered furniture, bedding and filling materials shall be kept separate from any secondhand upholstered furniture, bedding and filling materials that have not been sanitized.

Reviser's Note: This is a new section.

§ 32.1-224. Administration and enforcement by Commissioner.—The Commissioner is charged with the administration and enforcement of this article. The Commissioner may refuse to issue, may suspend or may revoke the license or permit of any person (i) who violates any provision of this article, any regulation of the Board pursuant to this article or any order of the Board or Commissioner or (ii) who is not a resident of this Commonwealth and fails or refuses to enter an appearance in any circuit court in this Commonwealth to answer a charge or charges of violation of any provision of this article, regulation of the Board or order of the Board or Commissioner within twenty-five days after service upon him of a notice by certified mail.

Reviser's Note: Source § 32-126. This section has been rewritten. It is proposed that the Bedding and Upholstery Advisory Board be deleted.

§ 32.1-225. Exemptions.—A. The provisions of this article shall not apply to:

1. Any items of bedding or upholstered furniture sold under the order of any court, any sale of a decedent's estate or any sale by any individual of his household effects.

2. Any interstate public carrier.

3. Any State institution, agency or department unless such institution, agency or department offers for sale to the public items of bedding or upholstered furniture manufactured, reupholstered

or renovated by it.

4. Individual blind persons renovating mattresses for institutions or individuals for use by such institutions or individuals and not for sale.

B. Any person who sells at retail exclusively on a consignment basis articles of bedding which are handmade by individuals and whose gross annual receipts from the sale of such articles are not in excess of two thousand dollars shall be deemed to be the manufacturer of such articles and shall not be required to obtain a license to make such articles. Each such article shall have a label affixed stating the kind of filling materials used in such article but shall be exempt from any other requirement as to tags set forth in this article.

Reviser's Note: Source § 32-127.

§ 32.1-226. Violation a misdemeanor.—Any person violating any provision of this article or any regulation of the Board adopted pursuant to this article shall be guilty of a Class 2 misdemeanor.

Reviser's Note: Source § 32-129. It is proposed that the penalty be raised to a Class 2 misdemeanor.

Article 8.

Radiation Control.

Reviser's Note: This proposed article has been largely rewritten. Provisions for rule-making authority, right of entry, injunctive relief, and penalties have been removed from this article and placed in the enforcement article of Chapter 1. Deleted from the draft is a declaration of policy. The bonding requirements have been rewritten and clarified.

§ 32.1-227. Definitions.—As used in this article unless the context requires a different meaning:

1. "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

2. "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

3. "Person" includes, in addition to the entities enumerated in paragraph 4. of § 32.1-3, an institution, agency and political subdivision of this Commonwealth and of any other state but does not include the United States Nuclear Regulatory Commission or any successor thereto or any federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto.

4. "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to the safety and health of any citizen of this Commonwealth.

5. "Radioactive material" means any material that emits ionizing radiation spontaneously.

6. "Source material" means (i) uranium, thorium, or any other material which the United States Nuclear Regulatory Commission, or any successor thereto, has determined to be source material; or (ii) ores containing one or more of the foregoing materials in concentrations determined by the United States Nuclear Regulatory Commission or any successor thereto to be source material.

7. "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or (ii) any material artificially enriched by any of the foregoing but not including source material.

Reviser's Note: Source § 32-414.3. The section has been rewritten.

§ 32.1-228. Exemption.—The provisions of this article shall not apply to nuclear reactors that are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.

Reviser's Note: Source § 32-414.7(e).

§ 32.1-229. General powers of Board.—The Board is authorized to:

1. Establish a program of effective regulation of sources of ionizing radiation for the protection of the public health and safety;

2 Establish a program to promote the orderly regulation of ionizing radiation within the Commonwealth, among the states and between the federal government and the Commonwealth and to facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

3. Establish a program to permit maximum utilization of sources of ionizing radiation consistent with the public health and safety.

4. Adopt regulations providing for (i) licenses to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of ionizing radiation and of information with respect thereto and (iii) regulation of by-product, source and special nuclear material.

5. Encourage, participate in and conduct studies, investigations, training, research and demonstrations relating to control of sources of ionizing radiation.

6. Develop programs for responding adequately to radiation emergencies and coordinate such programs with the State Office of Emergency Services.

Reviser's Note: Sources §§ 32-414.2, 32-414.4, 32-414.6, 32-414.7, and 32-414.16. These sections have been rewritten. Paragraph 4. is new and is a consolidation and condensation of several present sections.

§ 32.1-230. Further powers of Board.—The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for ionizing radiation control projects of the Board, including any and all lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;

3. To assume responsibility for perpetual custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the Commonwealth in the event the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive materials for

perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake; provided, that the fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations and are hereby appropriated for such purpose.

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used for development of atomic energy resources or used as custodial sites for radioactive material.

Reviser's Note: Source § 32-414.4(e). This and other sections are rewritten to refer to the Board, rather than to the State Radiation Control Agency, which term is deleted throughout the revised article.

§ 32.1-231. Bonds of licensees.—A. The Board is authorized to require bonds of licensees. A bond shall be forfeited when the public health and safety is endangered by ionizing radiation due to the abandonment by a licensee of a licensed activity or licensed materials or due to a violation of law by a licensee. Each bond so forfeited shall be credited to a special fund on the books of the Department called the Radiation Reclamation Fund and shall be expended as necessary to restore to a safe condition the site where the licensed activity is or was conducted or the licensed materials are located.

B. The Board shall adopt regulations for determining the amount of each bond based upon the potential for contamination and injury by the licensed activity or material, the cost of disposal of the licensed material and the cost of restoring the site of the licensed activity to a safe condition.

C. No State, local or other governmental agency shall be required to file a bond. The Board may, by regulation, provide for the exemption of classes of licensees from bonding requirements if such classes present no significant risk to the public health and safety.

D. An acceptable bond for the purposes of this section shall be a bond issued by a fidelity or surety company authorized to do business in Virginia, a personal bond secured by such collateral as the Board may require or a cash bond.

Reviser's Note: Source § 32-414.4:1.

§ 32.1-232. Radioactive Material Perpetual Care Trust Fund.—A. The Board may require a licensee to deposit funds on an annual basis in a trust fund which shall be known as the Radioactive Material Perpetual Care Trust Fund, when the Board determines that it is probable that the licensee may cease to operate a licensed facility thereby leaving a site containing or associated with licensable radioactive material which will require maintenance, surveillance or other care on a continuing basis.

B. In order to provide for such maintenance, surveillance or other care, the Board may acquire any such site pursuant to § 32.1-230.

C. The Board may by lease with or license to any person provide for the maintenance, surveillance or other care of any such site. Any lessee or licensee operating under the provisions of this section shall be subject to § 32.1-231.

D. Each deposit of funds required of a licensee shall be in such amount that interest on the sum of all funds reasonably anticipated as payable by such licensee shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor and otherwise supervise and care for the site as required in the interest of public health and safety. In arriving at the amount of funds to be deposited, the Board shall consider the nature of the licensed material, size and type of activity, estimated future receipts and estimated future expenses of maintenance, monitoring, and supervision.

E. All accrued interest on funds deposited in the Radioactive Material Perpetual Care Trust Fund is hereby appropriated to the Board and may be expended by the Board to acquire, monitor,

maintain, supervise and care for such sites as required to protect the public health and safety on a continuing basis.

F. If a person licensed by any government agency other than the Commonwealth desires to transfer a site to the Board for the purpose of administering or providing perpetual care and if the Board accepts such transfer, a lump-sum deposit shall be made to the Perpetual Care Trust Fund. The amount of such deposit shall be determined by the Board taking into consideration the factors stated in subsection D. of this section.

Reviser's Note: Source § 32-414.4:2. It is proposed that various duties be shifted from the Commissioner to the Board.

§ 32.1-233. Radiation Advisory Council established; composition; compensation of members; duties generally.—A. There is hereby established a Radiation Advisory Council consisting of ten appointive members and the six ex officio members specified below. The Governor shall appoint to the Advisory Council individuals from industry, labor and agriculture as well as individuals with scientific training in one or more of the following fields: radiology, medicine, radiation or health physics, or related sciences, with specialization in ionizing radiation. Not more than two individuals shall be specialists in any one of the above-named fields. Members of the Advisory Council shall serve at the pleasure of the Governor. Those members other than State employees or officials shall, when on business of the Advisory Council, be entitled to receive compensation at the rate of thirty-five dollars per diem and shall be reimbursed for actual expenses incurred. The Commissioner shall be an ex officio member and chairman of the Advisory Council, and the Commissioner of Labor and Industry, the Commissioner of Agriculture and Consumer Affairs, the chairman of the State Water Control Board or his designee, the Governor's representative on the Southern Interstate Nuclear Board, and the Director of the Virginia Institute of Marine Science shall be ex officio members of the Advisory Council.

B. The Advisory Council shall meet at least annually and shall:

1. Review and evaluate policies and programs of the Commonwealth relating to ionizing radiation; and

2. Make recommendations to the Commissioner and the Board, and furnish such technical advice as may be required, on matters relating to development, utilization and regulation of sources of ionizing radiation.

Reviser's Note: Source § 32-414.5. The Radiation Advisory Board would become the Radiation Advisory Council. The requirement of at least annual meetings of the Council is new. The per diem is proposed to be increased from $15.

§ 32.1-234. Use of radiation by practitioner of healing arts excepted.—This article shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts nor the qualifications of such a practitioner to use in his practice radiation produced by an X-ray machine or device not subject to federal regulation heretofore. Such a practioner may, however, be subject to any registration requirements established by the Board.

Reviser's Note: Source § 32-414.10.

§ 32.1-235. Authority of Governor to enter into agreements with federal government; effect on federal licenses.—A. The Governor is authorized to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this Commonwealth.

B. Any person who, on the effective date of an agreement under subsection A. above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this article. Such license shall expire either ninety days after receipt of a notice from the Commissioner of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

Reviser's Note: Source § 32-414.11.

§ 32.1-236. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.—A. The Board, with the prior approval of the Governor, is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

B. The Board, from funds provided by law, may institute training programs for the purpose of qualifying personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of this article.

Reviser's Note: Source § 32-414.12.

§ 32.1-237. Effect upon local ordinances, etc.—Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a county or city relating to by-product, source and special nuclear materials shall not be superseded by this article, provided that such ordinances or regulations are and continue to be consistent with the provisions of this article, amendments thereto and regulations thereunder.

Reviser's Note: Source § 32-414.13.

§ 32.1-238. Impounding sources of ionizing radiation.—The Commissioner is authorized, in the event of an emergency constituting a hazard to the public health and safety, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article or any regulations issued thereunder.

Reviser's Note: Source § 32-414.17.

Article 9.

Toxic Substances Information.

Reviser's Note: This article has been left essentially unchanged. Certain definitions and provisions for enforcement and penalty were deleted in light of general provisions found in Chapter 1. Also deleted are sections setting forth findings of the General Assembly and declaring policy and purpose. Much of the material therein has been inserted in the section dealing with the Board's powers and duties.

§ 32.1-239. Definitions.—As used in this article:

A. "Commercial establishment" means any commercial or industrial establishment, mill, factory, plant, refinery and any other works in which any chemical substance is manufactured or used as a raw material, catalyst, final product or process solvent for such; provided, however, this term shall not be construed in the administration of this act to include normal farming and timbering activities.

B. "Emitting" means the release of any substance from a manufacturing process, whether or not intentional or avoidable, into the work environment, into the air, into the water, or otherwise into the human environment.

C. "Manufacturing" means producing, formulating, packaging or diluting any substance for commercial sale or resale.

D. "Person" includes, in addition to the entities enumerated in paragraph 4. of § 32.1-3, the Commonwealth and any of its political subdivisions.

E. "Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial

establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal.

Reviser's Note: Source § 32-430.

§ 32.1-240. State Department of Health designated State toxic substance information agency.—The State Department of Health is designated as the State toxic substances information agency. The Commissioner of Health may employ, compensate, and prescribe the administrative and clerical duties of such individuals as may be necessary to discharge the responsibilities imposed by this article.

Reviser's Note: Source § 32-431.

§ 32.1-241. Powers and duties of Board.—The Board, with the advice of the Advisory Council, shall:

1. Develop and operate a system of reporting substances posing a high or unreasonable risk to health or the environment, which system shall be for use by agencies whose regulatory functions such information would assist and which shall be capable of being understood by such agencies and the reporting establishments;

2. Collect from any source, necessary information concerning substances which are toxic in certain concentrations and under certain conditions but shall avoid to the maximum extent possible duplication of the reporting requirements of the Federal Toxic Substances Control Act (Public Law 94-469) and other agencies of the Commonwealth;

3. Catalogue information on substances that are toxic so that the information can be retrieved quickly for use;

4. Institute proceedings in any appropriate court to compel the production of information concerning substances which are toxic;

5. Review and evaluate the information to determine whether it is competent, relevant, and material to be used in making a determination regarding toxicity of any substance and the concentrations and conditions under which the substance is toxic;

6. After receiving and evaluating information previously reported to the Board, pursuant to subsections A.1. and C.2. of § 32.1-244, promulgate on the basis of substantial evidence a list of Class 1 substances which the Board itself has determined from toxicological and other scientific data to pose the greatest threats to human health or the environment, listed individually or by generic class together with amounts in which the substances pose such risks. In promulgating or amending regulations hereunder, the Board shall provide documentation supporting such proposed regulations and give notice and hold informational proceedings in accordance with the Administrative Process Act (§ 9-6.14:1, et seq) of the Code of Virginia. The Board shall have the power to require reports as set forth in subsection C.1. of § 32.1-244 for Class 1 substances. The Board shall also have the power to require annual reporting of any significant changes in the inventory information required to be filed under subsection A.1. of § 32.1-244;

7. Exempt classes of commercial establishments which by reason of the manner of use or quantity of toxic substances present do not constitute a substantial risk to public health, safety or welfare. The Board may exempt individual commercial establishments which it determines constitute no substantial risk to the public health, safety or welfare;

8. Disseminate information concerning toxic substances to the agencies represented on the Advisory Council, to political subdivisions of the Commonwealth, and to the public;

9. Promulgate procedural rules for the conduct of activities under this article and promulgate substantive regulations to specify as necessary the details of the program.

Reviser's Note: Sources (1.)-§ 32-428.1(B); (2.)-§§ 32-432 and 32-429(A) and (B); and (3.-9.)-§ 32-432.

§ 32.1-242. Toxic Substances Advisory Council established; members; compensation; meetings; duties.—A. There is hereby established a Toxic Substances Advisory Council which shall consist of five appointed members and the twelve ex officio members, with voting power, specified below. The Governor shall appoint to the Advisory Council one member each from the fields of agriculture, medicine, labor, industry, and local government, who shall serve at the pleasure of the Governor, and shall be entitled, when on business of the Advisory Council, to receive compensation at the rate of thirty-five dollars per day, and shall be reimbursed for actual expenses incurred. The Commissioner of Health shall be an ex officio member and chairman of the Advisory Council. The other ex officio members of the Advisory Council shall be the chairmen of the State Water Control Board, the State Air Pollution Control Board, and the Board of Conservation and Economic Development, or their designees, the Commissioner of Labor and Industry, the Commissioner of Marine Resources, the Commissioner of Agriculture and Consumer Services, the Director of the Division of Consolidated Laboratory Services, the Director of the Division of Industrial Development, the Director of the Virginia Institute of Marine Science, the Coordinator of the Office of Emergency and Energy Services, and the Administrator of the Council on the Environment. The Advisory Council shall meet at least quarterly.

B. The Advisory Council shall (i) review and evaluate the policies and programs of the Commonwealth with respect to toxic substances and (ii) make recommendations to the Board and furnish such technical advice as may be required on matters relating to toxic substances.

Reviser's Note: Source § 32-433. It is proposed that the per diem be increased from $25.

§ 32.1-243. State agencies directed to cooperate with and furnish information to Board.—All agencies and institutions of the Commonwealth are authorized and directed to cooperate with the Board and to furnish to the Board all information which comes into their possession concerning substances which are toxic.

Reviser's Note: Source § 32-434.

§ 32.1-244. Duty of operators to report; contents of report; diagnosis of employee injuries and illnesses; disclosure of secret formulae, etc.—A. 1. Inventory Report. Each person who operates a commercial establishment that uses as a raw material, catalyst, final product or process solvent for such or manufactures a chemical substance or compound shall report to the Board the following information: (a) name and location of the commercial establishment; and (b) names and estimated quantities of raw materials, catalysts and final products. Such inventory shall be filed with the Board by such date as the Board shall establish by regulations.

2. Class 1 Toxic Report. Once the Board has established a Class 1 list of toxic substances, each person who operates a commercial establishment that uses as a raw material, catalyst, final product or process solvent or manufactures any Class 1 substances which meet or exceed amounts established by the Board shall have an affirmative duty to report to the Board such information as is required by subsection C.1. of this section within such reasonable time as the Board shall establish by regulation. After the initial report, a supplemental report shall be filed annually, listing any significant changes from the previously filed report; provided, the Commissioner may require supplemental information where there is good cause to believe that the filed information is inadequate, incomplete, or inaccurate.

B. 1. Inventory report. Each person who proposes to operate a new commercial establishment or a new process in an existing commercial establishment that will use as a raw material, catalyst, final product or process solvent for such or will manufacture a chemical substance shall report to the Board the following information: (a) name and location of the commercial establishment; and (b) names and estimated quantities of chemical substances to be used as a raw material, catalyst, final product or process solvent or manufactured by it. Such inventory report shall be filed with the Board at least sixty days prior to the date of anticipated use or manufacture and on such form as the Board shall establish.

2. Class 1 Toxic Report. Each person who proposes to operate a new commercial establishment or a new process in an existing commercial establishment that will use as a raw material, catalyst, final product or process solvent or will manufacture any Class 1 substance which meets or exceeds amounts established by the Board shall have an affirmative duty to report to the Board such information as is required by subsection C.1. of this section within such reasonable time as the

Board shall establish by regulation. After the initial report, a supplemental report shall be filed annually, listing any significant changes from the previously filed report; provided, the Commissioner may require supplemental information where there is good cause to believe that the filed information is inadequate, incomplete, or inaccurate.

C.1. Every Class 1 Toxic Report required to be submitted pursuant to this act shall be under oath or affirmation, and shall present, in form and detail prescribed by the Board, the following information:

(a) The name of the toxic substance used as a raw material, catalyst, final product or process solvent or manufactured;

(b) The known or reasonably expected to be known chemical properties of the toxic substances used as a raw material, catalyst, final product or process solvent or manufactured; provided, however, such chemical properties need not be reported insofar as they are available in standard reference texts;

(c) Any appropriate means or methods of detoxification or decontamination known to, or possessed by, the reporting establishment;

(d) The manner and extent to which the toxic substance is emitted into the work environment, the air, water or otherwise into the environment;

(e) Whether or not there is any reasonably foreseeable risk or danger that the toxic substance will adversely affect: (i) any sewerage or other waste treatment or solid waste disposal system or facility; (ii) any employee's health, as a result of contact with, or exposure to, such substance;

(f) Any other information or data known to or possessed by the commercial establishment which the Board may determine is necessary for the purposes of this act.

2(a) Each person who operates a commercial establishment that uses as a raw material, catalyst, final product or process solvent for such or manufactures any chemical substance or mixture not listed as Class 1 in such a manner that such person knows, or reasonably should be expected to know, is toxic and under the circumstances of its manufacture or use may pose a substantial threat to human health or to the environment shall have the affirmative duty to report to the Board that information and, thereafter, the Board shall request and shall be provided information known to or possessed by the reporting commercial establishment which is necessary for the Board to determine whether to proceed with a Class 1 designation of such substance in accordance with § 32.1-241.

(b) In discharging this duty to report, such person shall have the further affirmative duty to make reasonable inquiry into the toxicity of any such substance. Any knowledge of toxicity that is possessed by an employee or agent of such person, or by the holder of any patent on such substance under which such person is licensed to produce such substance, shall be attributed to such person if such person actually received that knowledge or, in the exercise of due diligence of such person, should have received that knowledge. Any knowledge of toxicity that is possessed by any consultant or independent contractor, who has been retained by such person to perform any evaluation or other task which involves any such substance, shall be attributed to such person if such person actually received that knowledge or, in the exercise of due diligence by such person. should have received that knowledge.

D. Each person who operates a commercial establishment in which any chemical substance is used as a raw material, catalyst, final product or process solvent or manufactured shall direct each of his employees to a physician for diagnosis of any injury or illness of any kind whatever that such person knows, or reasonably should be expected to know may be caused by such chemical substance.

E. No official, agent or employee of the Board or any agency or institution represented on the Advisory Council shall disclose any secret formulae, secret processes, secret methods, or other trade secrets to anyone who is not an official or employee of such agencies or institutions. No such official, agent or employee shall disclose any secret formulae , secret process, secret method or other trade secret to a federal agency or institution unless (1) such agency or institution is required

by law or regulation to have such information and (2) the request for such information is made in writing. Any official, agent, or employee who makes any unauthorized disclosure in violation of this article shall be liable to the person owning any secret formulae, secret processes, secret methods, or other trade secrets for treble the actual damages sustained by such person which was caused by any disclosure prohibited by this article. Any person to whom any prohibited disclosure is made who makes any use of such information or data disclosed in violation of this article shall, also, be liable for treble the actual damages sustained by the person whose secret formulae, secret processes, secret methods, or trade secrets are disclosed as a result of unauthorized or unlawful use thereof. Each official, agent, or employee of the Board and each member of the Advisory Council and his officials and employees having access to any secret formulae, secret processes, secret methods, or other trade secrets in any way obtained pursuant to this article, may execute an agreement with the Board not to disclose such confidential matters of information to any person who is not acting in an official capacity as required by the article. This agreement shall be enforceable by the Board or by any person harmed by such improper disclosure.

F. Nothing in this act shall be deemed to authorize or require physical examination or medical treatment for any person who objects thereto on religious grounds.

Reviser's Note: Source § 32-435.1.

§ 32.1-245. Annual report to General Assembly and Governor.—The Board shall advise the General Assembly and the Governor as to all matters relating to toxic substances and shall report annually on the status of the control of toxic substances in the Commonwealth.

Reviser's Note: Source § 32-438.

Article 10.

Miscellaneous Provisions.

§ 32.1-246. A. Marinas.—The Board is empowered and directed to adopt and promulgate all necessary regulations establishing minimum requirements for adequate sewerage facilities at marinas and other places where boats are moored according to the number of boat slips and persons such marinas and places are designed to accommodate. The provisions of this section shall be applicable to every such marina and place regardless of whether such establishment serves food.

B. The Commissioner shall enforce the provisions of this section and regulations adopted thereunder.

C. No such marina or place shall operate unless in accordance with this section and regulations adopted and promulgated thereunder.

D. Whenever the Commissioner shall have approved the plan for the sewerage facilities of a proposed marina for presentation to the Marine Resources Commission as provided in § 62.1-3, he shall have the power and duty to enforce compliance with such plan.

Reviser's Note: Source § 32-63.1. This section was left essentially unchanged, except for clarification of the responsibilities of the Board and the Commissioner to bring it into compliance with the general provisions of the title.

§ 32.1-247. Vector Control.—The Board shall develop and maintain the capability and technical competence necessary to investigate the occurrence of diseases borne by insects and rodents and shall recommend such measures as may be necessary to prevent the spread of such diseases and to eradicate or control disease-bearing insects and rodents.

Reviser's Note: This new subarticle gives legal authority to a program of vector control operated by the Department for some years and for which appropriations have been made.

§ 32.1-248. Closure of waters.—The Board may adopt regulations or orders closing any river, stream, lake or other body of water in this Commonwealth to fishing, boating, swimming or any

other usage if the Board finds, and states the reasons and precise factual basis for finding, that a toxic substance as defined in § 32.1-239 is present in such river, stream, lake or other body of water in such manner as to constitute a present threat to public health and welfare. Such regulation or order may be temporary or permanent and may be issued initially on an emergency basis. Thereafter it may be promulgated as a final regulation or order upon the completion by the Board of the procedural requirements set forth in the Administrative Process Act.

Reviser's Note: This is a new section to give the Board of Health the authority for certain actions to protect the public's health, which actions have been taken in the past under the provisions for emergency regulations.

CHAPTER 7.

VITAL RECORDS AND HEALTH STATISTICS.

Reviser's Note: The recodification of this chapter has involved a reorganization and consolidation of present provisions. Deletions were made in many instances when it was considered that the regulations of the Board of Health could appropriately replace statutes. The revised chapter reaffirms the relationship between the State Board of Health as the policy making body, the Commissioner of Health as the executive officer and the State Registrar as the day-to-day administrator of the provisions of the chapter.

Article 1.

Definitions and Administrative Provisions.

§ 32.1-249. Definitions.—As used in this chapter:

1. "Dead body" means a lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.

2. "Fetal death" means the death caused by induced abortion or the death prior to the complete expulsion or extraction from the mother of a product of human conception, irrespective of the duration of pregnancy, death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

3. "Filing" means the presentation of a certificate, report or other record provided for in this chapter, of a birth, death, fetal death, adoption, marriage or divorce for registration by the Department.

4. "Final disposition" means the burial, interment, cremation or other disposition of a dead body or fetus.

5. "Health statistics" means public health and medical data derived from vital records and other related records and reports.

6. "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals, or to which persons are committed by law.

7. "Live birth" means the complete expulsion or extraction from the mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

8. "Physician" means a person authorized or licensed to practice medicine or osteopathy in this

Commonwealth.

9. "Registration" means the acceptance by the Department and the incorporation in its official records of certificates, reports, or other records of births, deaths, fetal deaths, adoptions, marriages, or divorces as provided for in this chapter.

10. "State Registrar" means the State Registrar of Vital Records and Health Statistics.

11. "System of vital records and health statistics" means a system for the registration, collection, preservation, amendment, and certification of vital records and other health related records and reports and the tabulation, analysis, and publication of statistical data.

12. "Vital records" means certificates, reports and other records of births, deaths, fetal deaths, adoptions, marriages and divorces and amendments thereto registered as provided in this chapter.

Reviser's Note: Source § 32-353.4. There is added a definition of "health statistics" so that the new title will reflect the evolutionary changes which have taken place in the use of data collected on vital reports and other matters required by the title to be reported.

§ 32.1-250. Duties of Board.—A. The Board shall establish, maintain and operate a system of vital records and health statistics throughout this Commonwealth in conformity with the provisions of this chapter and provide a center for health statistics to perform data program development, reporting, systems operations, analysis and consultation for the Department, for county and city departments of health and other public agencies having health-related duties.

B. The Board shall safely preserve the records filed with the Department pursuant to this chapter or data obtained therefrom by providing suitable repositories and appropriate equipment for the handling of such records and data.

C. In its regulations the Board shall prescribe the exclusive forms upon which the information required by this chapter is to be reported and shall establish a schedule for the disposal of original vital records if the information in such vital records is preserved in a manner satisfactory to the Board.

Reviser's Note: Sources §§ 32-353.5 and 32-353.6. In subsection C., a new provision has been included for the disposal of original vital records, reflecting the advent and wide acceptability of data storage by electronic means. Deleted is the provision of § 32-353.6 authorizing the Board to promulgate regulations. A similar, title-wide provision is found in new ~~Chapter~~ 1.

§ 32.1-251. State Registrar; appointment.—The Commissioner shall appoint a State Registrar of Vital Records and Health Statistics.

Reviser's Note: Source § 32-353.7.

§ 32.1-252. Same; duties.—A. The State Registrar, under the supervision of the Commissioner, shall:

1. Carry out the provisions of this chapter and the regulations of the Board in a manner that will ensure the uniform and efficient administration of a system of vital records and health statistics.

2. Supervise a center for health statistics.

3. Direct, supervise and control the activities of county, city and special registrars.

4. Prepare and publish reports of health statistics of this Commonwealth and such other reports as may be required by the Commissioner or the Board.

5. Serve as custodian of the vital records registered with the Department, arrange, bind and permanently preserve in a systematic manner the certificates of all births, deaths, marriages and divorces registered with the Department or data derived therefrom and prepare and maintain a comprehensive and continuous index of such certificates and data.

6. Conduct training programs to promote uniformity in the application of this chapter.

7. Inspect vital records which have been sealed as provided by law whenever such inspection will facilitate the administration of this chapter without violating the confidentiality of such records.

8. Perform such other duties as may be required by law.

B. The State Registrar may delegate functions and duties vested in him to designated assistants and to county, city and special registrars as he deems necessary or expedient.

Reviser's Note: Source § 32-353.8. Items 6 and 7 are new. Item 7 is referred to several times throughout the chapter.

§ 32.1-253. Same; establishment of registration districts.—The State Registrar shall from time to time establish registration districts throughout the Commonwealth. He may consolidate or subdivide such districts to facilitate registration.

Reviser's Note: Source § 32-353.9.

§ 32.1-254. County and city registrars designated; deputies; special registrars.—A. County and city health directors shall be county and city registrars of vital records and health statistics for their jurisdiction and each shall appoint one or more deputies in the county or city health department. Each county or city registrar may recommend that the State Registrar appoint a special registrar when necessary to facilitate registration in his county or city.

B. When there is no duly appointed county or city health director, the State Registrar shall appoint a county or city registrar to serve pending the appointment of a health director.

Reviser's Note: Source § 32-353.10. The change in terminology from "local registrar" to "special registrar" is made for clarity.

§ 32.1-255. Duties of county, city and special registrars and deputies.—A. The county, city or special registrar with respect to his jurisdiction shall:

1. Perform his duties pursuant to the provisions of this chapter and regulations issued hereunder.

2. Transmit twice monthly the certificates, reports, or other records filed with him to the State Registrar or more frequently when directed to do so by the State Registrar.

3. Maintain such local records, make such reports and perform such other duties as may be required by the State Registrar.

B. Deputies shall perform the duties of the registrar in the absence or incapacity of such registrar and shall perform such other duties as may be prescribed by the State Registrar.

Reviser's Note: Source § 32-353.11.

§ 32.1-256. Fees of special registrars.—A. Each special registrar not employed by any federal, State or local agency shall be paid the sum of one dollar for each certificate of birth, death or fetal death registered by him and transmitted to the county or city registrar of vital records and health statistics.

B. If no birth, death or fetal death is registered by him during any calendar month, such special registrar shall report that fact to the county or city registrar of vital records and health statistics and shall be paid the sum of one dollar for each such month.

C. The State Registrar shall certify to the treasurer of the county or city quarterly the number of birth, death and fetal death certificates registered by such special registrar, with the name of such special registrar and the amount due. Upon such certification, the fees due such special registrar shall be paid by the treasurer of the appropriate county or city.

Reviser's Note: Sources §§ 32-353.12 and 32-353.13. It is proposed that the fee for special registrars be increased from $.50 per certificate.

Article 2.

Birth Certificates.

§ 32.1-257. Filing birth certificates; from whom required; signatures of parents.—A. A certificate of birth for each live birth which occurs in this Commonwealth shall be filed with the registrar of the district in which the birth occurs within seven days after such birth and shall be registered by such registrar if it has been completed and filed in accordance with this section; provided, that when a birth occurs in a moving conveyance a birth certificate shall be filed in the district in which the child was first removed from the conveyance.

B. When a birth occurs in an institution, the person in charge of such institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within five days after the birth.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

1. The physician in attendance at or immediately after the birth, or in the absence of such physician,

2. Any other person in attendance at or immediately after the birth, or in the absence of such a person,

3. The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

D. If the mother of a child is not married to the natural father of the child at the time of birth or was not married to the natural father at any time during the ten months next preceding such birth, the name of the father shall not be entered on the certificate of birth without the written consent of both the mother and of the person to be named as the father unless a determination of paternity has been made by a circuit court of the Commonwealth , in which case the name of the father as determined by the court shall be entered.

E. Either of the parents of the child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit the filing within the seven days prescribed above.

Reviser's Note: Source § 32-353.15. Presently in the chapter there are several references to "courts of competent jurisdiction". The Department had been accepting orders of courts from other states and foreign countries. The Department feels, however, that the language had originally been intended to refer to circuit courts of the Commonwealth. Accordingly, the language was changed to specify circuit courts of the Commonwealth. In those instances where foreign courts will issue decrees in matters such as name change or adoption, etc., it is expected that those decrees can be registered with the appropriate circuit court of the Commonwealth and receive recognition from the court under the full faith and credit clause of the United States Constitution. Consequently, this change should not place an unreasonable burden upon nonresidents when weighed against the Commonwealth's legitimate interest in preserving the integrity of its vital records.

§ 32.1-258. Report of foundling; constitutes birth certificate.—A. Whoever assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the Board within seven days to the registrar of the county or city in which such child was found, the following information:

1. The date and place of finding;

2. Sex, race and approximate age of such child;

3. Name and address of the persons or institution with whom such child has been placed for care;

4. Name given to such child by the custodian; and

5. Such other data as may be required by the Board.

B. The place where such child was found shall be entered as the place of birth and the date of birth shall be determined by approximation.

C. A report registered under this section shall constitute the certificate of birth for such infant.

D. If such child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and may be opened only by order of a circuit court of the Commonwealth or in accordance with § 32.1-252 A.7.

Reviser's Note: Source § 32-353.16.

§ 32.1-259. Filing and registration of delayed birth certificates; refusal of registration; notice of right of appeal.—A. When the birth of a person born in this Commonwealth has not been registered, a certificate may be prepared and filed in accordance with regulations of the Board. Such certificate shall be registered subject to such documentary evidence requirements as the Board shall by regulation prescribe to substantiate the alleged facts of birth.

B. A certificate of birth registered one year or more after the date of birth shall be marked "Delayed" and shall show on the face the date of the delayed registration.

C. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate.

D. 1. When an applicant does not submit the minimum documentary evidence required in the regulations for delayed registration or when the State Registrar finds reason to question the validity or adequacy of the proposed certificate or the documentary evidence, the State Registrar shall not register the delayed certificate and shall notify the applicant of the reasons for this action. In the event the deficiencies are not corrected, the State Registrar shall advise the applicant of his right to petition for a court order pursuant to § 32.1-260.

2. The Board may by regulation provide for the dismissal of an application which is not actively pursued.

Reviser's Note: Source § 32-353.17.

§ 32.1-260. Petition for court order establishing record of birth when delayed certificate rejected; hearing; notice; findings; registration of court order.—A. If a delayed certificate of birth is rejected under the provisions of § 32.1-259, a petition for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered may be filed with the circuit court of the county or city in which the person resides; or if the person be a citizen of this Commonwealth without a fixed residence or a resident of another state, the petition may be to the circuit court of the county or city in which such person's birth occurred. In case of a minor who has no parent or guardian, the application may be made by his next friend.

B. Such petition shall allege:

1. That the person for whom a delayed certificate of birth is sought was born in this Commonwealth;

2. That no record of birth of such person can be found in the records of the State Registrar or the county or city registrar;

3. That diligent efforts by the petitioner have failed to obtain the evidence required by

regulations pursuant to § 32.1-259; and

4. That the State Registrar has refused to register a delayed certificate of birth.

C. The petition shall be accompanied by the notice of the State Registrar made in accordance with § 32.1-259 D.1. and all documentary evidence which was submitted to the State Registrar in support of such registration.

D. The court shall fix a time and place for hearing the petition and shall give the State Registrar five days' notice of said hearing. The State Registrar, or his authorized representative, may appear and testify in the proceeding.

E. If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this Commonwealth, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order on a form furnished by the State Registrar to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented in the manner prescribed by § 32.1-259, and the date of the court's action.

F. The clerk of such court shall forward each such order to the State Registrar not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the State Registrar and shall constitute the record of birth, from which copies may be issued in accordance with § 32.1-272.

Reviser's Note: Source § 32-353.18.

§ 32.1-261. New birth certificate established on proof of adoption, legitimation or determination of paternity.—A. The State Registrar shall establish a new certificate of birth for a person born in this Commonwealth when the State Registrar receives the following:

1. An adoption report as provided in § 32.1-262 or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if eighteen years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation of the Board proving that such person has been legitimated or that a circuit court of the Commonwealth has determined the paternity of such person.

B. When a new certificate of birth is established pursuant to subsection A. of this section, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity or legitimation shall be sealed and filed and not be subject to inspection except upon order of a circuit court of this Commonwealth or in accordance with § 32.1-252 A.7.

C. Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a circuit court of this Commonwealth or in accordance with § 32.1-252 A.7.

D. The State Registrar shall establish and register a Virginia certificate of birth for a person born in a foreign country and for whom a final order of adoption has been entered in a circuit court of this Commonwealth when the State Registrar receives an adoption report as provided in § 32.1-262 and a request that such a certificate be established and registered; provided, however, that a Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the adoption, the adoptive parents or the adopted person if eighteen years of age or older. After registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a circuit court of this Commonwealth or in accordance with § 32.1-252 A.7. The birth certificate shall show the true or probable foreign country of birth and shall state that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the

adoptive parents.

E. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in § 32.1-259 or § 32.1-260 before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

Reviser's Note: Source § 32-353.19.

Article 3.

Records of Adoptions.

§ 32.1-262. Records of adoptions.—A. For each adoption decreed by a court in this Commonwealth, the court shall require the preparation of a report of adoption on a form furnished by the State Registrar. The report (i) shall include such facts as are necessary to locate and identify the original certificate of birth of the person adopted or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the court as to the date, place of birth and parentage of such person; (ii) shall provide information necessary to establish a new certificate of birth of the person adopted; and (iii) shall identify the order of adoption and be certified by the clerk of court.

B. Information in the possession of the petitioner necessary to prepare the report of adoption shall be furnished with the petition for adoption by each petitioner for adoption or by his attorney. In all cases where a child is placed for adoption by a child-placing agency, the report shall be completed and filed with the court by a representative of the agency.

C. On or before the tenth day of each month, the clerk of such court shall forward to the State Registrar all records of decrees of adoption entered in the preceding calendar month, together with such related reports as the State Registrar may require.

D. When the State Registrar receives a record of adoption from a court for a person born outside this Commonwealth, such record shall be forwarded to the appropriate registration authority in the state of birth. When the State Registrar shall receive a record of adoption from a court in this Commonwealth for a person born in a foreign country, a birth certificate shall be registered for such person in accordance with the provisions of § 32.1-261, and a copy of the report of adoption shall be transmitted to the appropriate federal agency.

Reviser's Note: Source § 32-353.32.

Article 4.

Death Certificates and Out-of-State Transit Permits.

§ 32.1-263. Filing death certificates; medical certification; investigation by medical examiner.—A. A death certificate for each death which occurs in this Commonwealth shall be filed with the registrar of the district in which the death occurred within three days after such death and prior to final disposition or removal of the body from the Commonwealth, and shall be registered by such registrar if it has been completed and filed in accordance with this section; provided:

1. That if the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three days after discovery of such body; and

2. That if death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body was first removed from such conveyance.

B. The funeral director or person who first assumes custody of a dead body shall obtain the

personal data, prepare the certificate, secure the signatures required by the certificate and file it with the registrar. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death from the person responsible for preparing the same as provided in this section.

C. The medical certification portion of the death certificate shall be completed and signed within twenty-four hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry or investigation by a medical examiner is required by § 32.1-283.

D. When inquiry or investigation by a medical examiner is required by § 32.1-283, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within twenty-four hours after being notified of the death. If the medical examiner refuses jurisdiction, the physician last furnishing medical care to the deceased shall prepare and sign the medical certification portion of the death certificate.

E. In any case where an autopsy is performed, the physician pathologist may complete and sign the medical certification portion of the death certificate.

F. The medical examiner shall complete and sign the medical certification portion of the death certificate of any person who was engaged in employment at the Radford Army Ammunition Plant in Montgomery County at the time of the explosion at such Plant on January six, nineteen hundred seventy-eight and who is missing if and when such medical examiner finds from clear and convicing evidence that such person died as a result of such explosion.

Reviser's Note: Source § 32-353.20. Subsection E. and the last sentence of subsection D. are new.

§ 32.1-264. Reports of fetal deaths; medical certification; investigation by medical examiner; confidentiality of information concerning abortions.—A. A fetal death report for each fetal death which occurs in this Commonwealth shall be filed, on a form furnished by the State Registrar, with the registrar of the district in which the delivery occurred or the abortion was performed within three days after such delivery or abortion and shall be registered with such registrar if it has been completed and filed in accordance with this section; provided that:

1. If the place of fetal death is unknown, a fetal death report shall be filed in the registration district in which a dead fetus was found within three days after discovery of such fetus; and

2. If a fetal death occurs in a moving conveyance, a fetal death report shall be filed in the registration district in which the fetus was first removed from such conveyance.

B. The funeral director or person who first assumes custody of a dead fetus or, in the absence of a funeral director or such person, the hospital representative who first assumes custody of a fetus shall file the fetal death report; in the absence of such a person, the physician or other person in attendance at or after the delivery or abortion shall file the report of fetal death. The person completing the forms shall obtain the personal data from the next of kin or the best qualified person or source available, and he shall obtain the medical certification of cause of death from the person responsible for preparing the same as provided in this section. In the case of induced abortion, such forms shall not identify the patient by name.

C. The medical certification portion of the fetal death report shall be completed and signed within twenty-four hours after delivery or abortion by the physician in attendance at or after delivery or abortion except when inquiry or investigation by a medical examiner is required.

D. When a fetal death occurs without medical attendance upon the mother at or after the delivery or abortion or when inquiry or investigation by a medical examiner is required, the medical examiner shall investigate the cause of fetal death and shall complete and sign the medical certification portion of the fetal death report within twenty-four hours after being notified of the fetal death.

E. The information obtained and the reports prepared pursuant to this section shall be used only for statistical purposes.

Reviser's Note: Source § 32-353.21.

§ 32.1-265. Transit permits; permits for disinterment and reinterment.—A. The funeral director or person acting as such who first assumes custody of a dead body or fetus shall obtain an out-of-state transit permit prior to removal from the Commonwealth of the body or fetus.

B. Such out-of-state transit permit shall be issued by the registrar of the district where a satisfactorily completed certificate of death or fetal death was filed.

C. A transit permit issued under the law of another state which accompanies a dead body or fetus brought into this Commonwealth shall be authority for final disposition of the body or fetus in this Commonwealth.

D. No permit shall be required where disposal of dead bodies or fetuses for deaths or fetal deaths which have occurred in this Commonwealth is to be made in this Commonwealth.

E. A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by regulation of the Board or otherwise provided by law. Such permit shall be issued by the State Registrar or the registrar of the county or city where the body or fetus is interred to a licensed funeral director, embalmer, or other person acting as such.

Reviser's Note: Source § 32-353.22.

§ 32.1-266. Extending time for filing death certificates and obtaining out-of-state transit permits. —The Board may provide by regulation for the extension, upon conditions designed to assure compliance with the purposes of this chapter, of the periods prescribed in §§ 32.1-263, 32.1-264 and 32.1-265 for the filing of death certificates, fetal death reports and medical certifications of cause of death and for the obtaining of out-of-state transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship.

Reviser's Note: Source § 32-353.23.

Article 5.

Marriage Records and Divorce and

Annulment Reports.

§ 32.1-267. Records of marriages; duties of officer issuing marriage license and person officiating at ceremony.—A. For each marriage performed in this Commonwealth, a record showing personal data for the married parties, the marriage license, and the certifying statement of the facts of marriage shall be filed with the State Registrar as provided in this section.

B. The officer issuing a marriage license shall prepare the record based on the information obtained under oath or by affidavit from the parties to be married. The parties shall also affix their signatures to the application for such license.

C. Every person who officiates at a marriage ceremony shall certify to the facts of marriage and file the record in duplicate with the officer who issued the marriage license within five days after the ceremony. In the event said officiant dies or becomes incapacitated before completing the certificate of marriage, the official who issued the marriage license shall complete the certificate of marriage upon the order of the court to which is submitted proof that the marriage was performed.

D. Every officer issuing marriage licenses shall on or before the tenth day of each calendar month forward to the State Registrar a record of each marriage filed with him during the preceding calendar month.

E. The State Registrar shall furnish forms for the marriage license, marriage certificate, and application for marriage license used in this Commonwealth.

Reviser's Note: Source § 32-353.34.

§ 32.1-268. Reports of divorces and annulments.—A. For each final decree of divorce or annulment of marriage granted by a court in this Commonwealth, a report shall be certified and filed by the clerk of court with the State Registrar. The information necessary to prepare the report shall be furnished, with the petition or when filing the decree, to the clerk of court by the petitioner or his attorney on forms prescribed by the Board and furnished by the State Registrar.

B. On or before the tenth day of each month the clerk of court shall forward to the State Registrar the report of each final decree of divorce and annulment granted during the preceding calendar month and such related reports as the State Registrar may require.

Reviser's Note: Source § 32-353.33.

Article 6.

Amendments to Vital Records.

§ 32.1-269. Amending vital records; change of name; acknowledgment of paternity.—A. A vital record registered under this chapter may be amended in accordance with this article and such regulations as may be adopted by the Board to protect the integrity and accuracy of such vital records. Such regulations shall specify the minimum evidence required for a change in any such vital record. If the State Registrar finds reason to question the validity or sufficiency of the evidence, the vital record shall not be amended and he shall so advise the applicant. An aggrieved applicant may petition the circuit court of the county or city in which he resides or the Circuit Court of the City of Richmond, Division I, for an order compelling the State Registrar to amend the vital record. The State Registrar or his authorized representative may appear and testify in such proceeding.

B. Except in the case of an amendment provided for in subsection D., a vital record that is amended under this section shall be marked "amended" and the date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the vital record. The Board shall prescribe by regulation the conditions under which omissions or errors on certificates, including designation of sex, may be corrected within one year after the date of the event without the certificate being considered as amended. In a case of hermaphroditism or pseudo-hermaphroditism, the certificate of birth may be corrected at any time without being considered as amended upon presentation to the State Registrar of such medical evidence as the Board may require by regulation.

C. Upon receipt of a certified copy of a court order changing the name of a person as listed in a vital record and upon request of such person or his parent, guardian, or legal representative or the registrant, the State Registrar shall amend such vital records to reflect the new name.

D. Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the State Registrar shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents, the surname of the child shall be changed on the certificate to that of the father.

E. Upon submission of evidence required by regulation of the Board proving that a person has had a change of sex by medical procedure and upon request of such person, the State Registrar shall amend such person's certificate of birth to show the change of sex and, if a certified copy of a court order changing the person's name is submitted, to show a new name.

Reviser's Note: Source § 32-353.24. The third through fifth sentences of subsection A. are new. The last sentence of subsection B. is new. Because of new medical technology which now makes possible sex changes by medical procedures, there has been added a new subsection E., relating to amending birth certificates in those instances. It was discovered that the Health Department staff had in the past been amending certificates to reflect such changes on a somewhat doubtful statutory basis. Under this new provision, the certificate will be amended to reflect the fact that the sex has been changed, rather than a new certificate be issued. The rationale for not issuing a new

certificate which does not reflect the fact that the sex has been changed is that vital records are intended to state facts at a certain point in time, i.e., at the time of birth. Subsection B. deals with mistakes in sex designation on birth certificates. This provision is intended to deal with two situations: (1) where a legitimate typograpghical error has been made on the original birth certificate; and (2) the medical situation involving an hermaphrodite infant. Certificates amended in these two circumstances would not indicate that an amendment has been made.

Article 7.

Miscellaneous Provisions.

§ 32.1-270. State Registrar may reproduce records.—To preserve original documents, the State Registrar is authorized to prepare reproductions of original vital records by typewritten, photographic, or electronic means. Such reproductions when certified by him shall be used as the original.

Reviser's Note: Source § 32-353.25.

§ 32.1-271. Unlawful disclosure of information in records.—A. To protect the integrity of the system of vital records and health statistics and to insure the proper use of vital records, it shall be unlawful, notwithstanding the provisions of §§ 2.1-340.1 through 2.1-346.1, for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any such vital records except as authorized by regulation of the Board or when so ordered by a circuit court of this Commonwealth.

B. Data contained in vital records may be disclosed for valid and substantial research purposes in accordance with the regulations of the Board.

C. Any person aggrieved by a decision of a county or city registrar may appeal to the State Registrar. If the State Registrar denies disclosure of information or inspection of or copying of vital records, such person may petition the circuit court of the county or city in which he resides if he resides in the Commonwealth or in which the recorded event occurred or the Circuit Court of the City of Richmond, Division I, for an order compelling disclosure, inspection or copying of such vital record. The State Registrar or his authorized representative may appear and testify in such proceeding.

Reviser's Note: Source § 32-353.26. The provisions for appeals to the circuit court are new.

§ 32.1-272. Certified copies of vital records; other copies.—A. If in accordance with § 32.1-271 and the regulations adopted pursuant thereto, the State Registrar shall, upon request, issue a certified copy of any vital record in his custody or of a part thereof. Such vital records in his custody may be in the form of originals, photo processed reproductions or data filed by electronic means. Each copy issued shall show the date of registration. Any copy issued from a record marked "delayed," "amended," or "court order", except a record amended pursuant to subsection F. of this section or subsection D. of § 32.1-269, shall be similarly marked and show the effective date. Certified copies may be issued by county and city registrars only while the original record is in their possession, except that at the option of the county or city registrar true and complete copies of death certificates may be retained and certified copies of such records may be issued by the county or city registrar.

B. A certified copy of a vital record or any part thereof issued in accordance with subsection A. shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts therein stated, provided that the evidentiary value of a vital record filed more than one year after the event or a vital record which has been amended shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

C. The federal agency responsible for national vital and health statistics may be furnished such copies or data as it may require for national statistics and such data as may be necessary for research and medical investigations of public health importance. No other use of such data shall be made by the federal agency unless authorized by the State Registrar. The Commonwealth shall be

reimbursed for the cost of furnishing such data.

D. Federal, State, local, and other public agencies in the conduct of their official duties may, upon request, be furnished copies or data for statistical or verification purposes upon such terms or conditions as may be prescribed by the Board.

E. No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, or fetal death except as authorized in this chapter or regulations adopted hereunder.

F. Certified copies of birth records filed before July one, nineteen hundred sixty, containing statements of racial designation on the reverse thereof shall be issued without such statement as a part of the certification; nor for this purpose solely shall such certification be marked "amended."

Reviser's Note: Source § 32-353.27.

§ 32.1-273. Fees for certified copies, searches, certain birth certificates, amendments and information; disposition.—A. The Board shall prescribe the fee, not to exceed three dollars, for a certified copy of a vital record or for a search of the files or records when no copy is made, and not to exceed five dollars for processing and issuing one certified copy of a delayed birth certificate pursuant to the provisions of § 32.1-259 or § 32.1-260, for establishing a birth certificate pursuant to § 32.1-261, for amending a vital record pursuant to § 32.1-269, or for information provided for research, statistical or administrative purposes.

B. Fees collected under this section by the State Registrar shall be deposited in the general fund of the State Treasury.

C. Fees collected under this section by county and city registrars shall be deposited in the general fund of the county or city except that counties or cities operating health departments pursuant to the provisions of § 32.1-31 shall forward all such fees to the Department for deposit in the cooperative local health services fund.

Reviser's Note: Source § 32-353.28.

§ 32.1-274. Persons in charge of institutions and funeral directors, etc., to keep records; lists sent to State Registrar.—A. Every person in charge of an institution shall keep a record concerning each person admitted or confined to such institution which shall include such information as required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this chapter. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

B. When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, the name and address of the person to whom the body is released and the date of removal from the institution, or, if final disposal is by the institution, the date, place, and manner of disposition.

C. A funeral director, embalmer, or other person who removes from the place of death or transports or is in charge of final disposal of a dead body or fetus, in addition to filing any certificate, report or form required by this chapter, shall keep a record which shall identify the body, and such information pertaining to his receipt, removal, and delivery of such body as may be prescribed in regulations adopted by the Board.

D. Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall cause to be sent to the State Registrar a list showing thereon all births, deaths, and fetal deaths occurring in such institution during the preceding month. Such lists shall be on forms provided by the State Registrar.

E. Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the State Registrar a list showing thereon all caskets furnished, bodies prepared for disposition and transportation and funerals performed where no casket was furnished

by the funeral director during the preceding month. Such lists shall be on forms provided by the State Registrar.

F. Records maintained under this section shall be retained for a period of not less than ten years and shall be made available for inspection by the State Registrar or his representative upon demand.

Reviser's Note: Source § 32-353.29.

§ 32.1-275. Information as to births, deaths, marriages and divorces to be furnished on demand. —It shall be the duty of any person to furnish such information as he may possess regarding any birth, death, fetal death, marriage or divorce, upon demand of the State Registrar in person, by mail, or through the county, city, or special registrar.

Reviser's Note: Source § 32-353.30.

§ 32.1-276. Penalty imposed for violations.—Any person:

1. who willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in an application for an amendment of any such report, record or certificate, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof; or

2. who without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of such report, record, or certificate; or

3. who willingly and knowingly gives false information in an application for a certificate or for verification of a vital record; or

4. who willfully and knowingly uses or attempts to use, or furnishes to another for use, for any purpose of deception, any certificate, record or report required to be filed under this chapter or certified copy thereof made, altered, amended, or mutilated without lawful authority and with the intent to deceive; or

5. who with the intent to deceive willfully obtains, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person

shall be guilty of a Class 6 felony.

Reviser's Note: Source § 32-353.31. In view of the fact that the general provisions of the title provide a misdemeanor penalty for the violation of any of the provisions of the title, certain portions of the former penalty section of this chapter were deleted. However, the Health Department felt that certain violations of the chapter warranted a felony penalty. As a result the draft includes a felony penalty section for those specific crimes, including a new prohibition found in item 3. The prohibition against "obtaining" found in item 5 is new.

CHAPTER 8.

POSTMORTEM EXAMINATIONS AND SERVICES.

Article 1.

Chief Medical Examiner and Postmortem Examinations.

§ 32.1-277. Central and district offices and facilities.—The Commissioner shall establish and maintain, for medicolegal investigation of deaths and postmortem examinations, a central office and facilities in the city of Richmond and such district offices and facilities in such localities in the Commonwealth as are necessary. Each such office and facility shall have adequate professional and technical personnel and physical facilities for the conduct of such examinations and investigations as may be authorized or required by law.

Reviser's Note: Source §§ 32-31.12.

§ 32.1-278. Appointment and qualifications of Chief Medical Examiner.—A Chief Medical Examiner, who shall be a forensic pathologist licensed to practice medicine in this Commonwealth, shall be appointed by the Commissioner with the approval of the Board.

Reviser's Note: Source § 32-31.10. It is proposed that the qualifications of the Chief Medical Examiner be enhanced to require a forensic (medical-legal) pathologist licensed to practice medicine in Virginia. The manner of appointment is not changed.

§ 32.1-279. Duties of Chief Medical Examiner.—A. The Chief Medical Examiner shall carry out the provisions of this article under the direction of the Commissioner. The central and district offices and facilities established as provided in § 32.1-277 shall be under the supervision of the Chief Medical Examiner.

B. The Chief Medical Examiner and his assistants shall be available to Virginia Commonwealth University, the University of Virginia, the Eastern Virginia Medical School and other institutions of higher education providing instruction in health science or law for teaching legal medicine and other subjects related to their duties.

Reviser's Note: Source § 32-31.12. Outlines the duties of the Chief Medical Examiner and authorizes him and his assistants to teach in the medical and other health education institutions of the Commonwealth.

§ 32.1-280. Assistant Chief Medical Examiners.—The Chief Medical Examiner, with the approval of the Commissioner, may employ forensic pathologists to serve as Assistant Chief Medical Examiners in the central and district offices established as provided in § 32.1-277.

Reviser's Note: Source § 32-31.13.

§ 32.1-281. Commissioner may obtain additional services and facilities.—In the investigation of any death or for the performance of any autopsy authorized or required pursuant to this article, the Commissioner may, in addition to the central and district office personnel, employ and pay, out of funds appropriated for such purpose, a qualified pathologist, designated by the Chief Medical Examiner, to perform such autopsy or to make such pathological studies and investigations as may be deemed necessary or advisable by the Chief Medical Examiner and may arrange for the use of mortuary facilities.

Reviser's Note: Source § 32-31.15. The foregoing two sections authorize the Chief Medical Examiner to employ assistant forensic pathologists as State employees and, if necessary, to pay for specific services by other pathologists and for the use of mortuary facilities.

§ 32.1-282. Local medical examiners.—A. The Chief Medical Examiner shall appoint for each county and city one or more medical examiners to take office on the first day of October of the year of appointment.

B. Each medical examiner shall be licensed to practice medicine in this Commonwealth and shall be appointed from a list of two or more nominations submitted by the medical society for the county or city for which the appointment is to be made. If no list of names is submitted, the Chief Medical Examiner shall select the medical examiner or medical examiners.

C. The term of each medical examiner so appointed shall be three years and until his successor is appointed and has qualified.

D. The Chief Medical Examiner shall fill any vacancy in the office of medical examiner for the

unexpired term and shall make any necessary temporary appointments.

E. In the event the medical examiner of any county or city is unable to serve in any particular case or for any period of time on account of illness, enforced absence or personal interest, the Chief Medical Examiner shall designate some other qualified doctor of medicine to serve in the place of such medical examiner in such particular case or for such period of time.

Reviser's Note: Source § 32-31.16.

§ 32.1-283. Investigation of deaths.—A. Upon the death of any person from trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent health, or when unattended by a physician, or in jail, prison, other correctional institution or in police custody, or suddenly as an apparent result of fire, or in any suspicious, unusual or unnatural manner, the medical examiner of the county or city in which death occurs shall be notified by the physician in attendance, hospital, law-enforcement officer, funeral director or any other person having knowledge of such death.

B. Upon being notified of a death as provided in subsection A., the medical examiner shall take charge of the dead body, make an investigation into the cause and manner of death, reduce his findings to writing, and promptly make a full report to the Chief Medical Examiner. In order to facilitate his investigation, the medical examiner is authorized to inspect and copy the pertinent medical records of the decedent whose death he is investigating. Full directions as to the nature, character and extent of the investigation to be made in such cases shall be furnished each medical examiner by the Chief Medical Examiner, together with appropriate forms for the required reports and instructions for their use. The facilities and personnel under the Chief Medical Examiner shall be made available to medical examiners in such investigations.

C. A copy of each report pursuant to this section shall be delivered to the appropriate attorney for the Commonwealth and a copy of any such report regarding the death of a victim of a traffic accident shall be furnished upon request to the State Police and the Highway Safety Commission.

D. For each investigation under this article, including the making of the required reports, the medical examiner shall receive a fee established by the Board within the limitations of appropriations for the purpose. Such fee shall be paid by the Commonwealth, unless the deceased is a legal resident of the county or city in which his death occurred, in which event such county or city shall be responsible for the fee.

Reviser's Note: Sources (A.)-§ 32-31.17; (B.)-§§ 32-31.18 and 32-31.20; (C. and D.)-§ 32-31.18. The words "trauma," "injury," "poisoning," "accident," "suicide," "homicide," "jail," "other correctional institution or in police custody" are added to emphasize the responsibility for notifying the Medical Examiner about such deaths. It is proposed that those required to report be expanded to include "hospital". The term "funeral director" is used in place of the obsolete term "undertaker". The term "other person having knowledge of such death" is used so as to be more inclusive than "person present". In subsection B., the medical examiner is given authority to inspect and copy pertinent medical records. Authority to establish compensation to be paid the medical examiners for their investigations is placed in the Board of Health.

§ 32.1-284. Cremations and burials at sea.—No dead human body whose death occurred in Virginia shall be cremated or buried at sea, irrespective of the cause and manner of death, unless a medical examiner shall determine that there is no further need for medicolegal inquiry into the death and shall so certify upon a form supplied by the Chief Medical Examiner. For this service the medical examiner shall be entitled to a fee established by the Board, not to exceed the fee provided for in subsection D. of § 32.1-283, to be paid by the applicant for the certificate.

Reviser's Note: This new section was added to clarify and call attention to the statutory requirement that a medical examiner authorize any cremation of a dead human body whose death occurred in Virginia. Presently this requirment is set out only in § 54-260.74. The fee to be paid the medical examiner for this function is to be established by the Board of Health. Added is the provision for burial at sea.

§ 32.1-285. Autopsies.—If, in the opinion of the medical examiner investigating the death or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy be made or

if an autopsy is requested by the attorney for the Commonwealth or by a judge of the circuit court of the county or city wherein such body is or where death occurred or wherein any injury contributing to or causing death was sustained, an autopsy shall be performed by the Chief Medical Examiner, an Assistant Chief Medical Examiner or a pathologist employed as provided in § 32.1-281. A full record and report of the facts developed by the autopsy and findings of the person making such autopsy shall be promptly made and filed with the Chief Medical Examiner and a copy furnished the judge or attorney for the Commonwealth requesting such autopsy. In the discretion of the Chief Medical Examiner or the medical examiner, a copy of any autopsy report or findings may be furnished to any appropriate attorney for the Commonwealth.

Reviser's Note: Source § 32-31.19. The Commonwealth's Attorney and the judge of the circuit court in whose jurisdiction the death or contributory injury occurred are authorized to request an autopsy. Clarifies the persons who are to receive copies of the autopsy report.

§ 32.1-286. Exhumations.—A. In any case of death described in subsection A. of § 32.1-283, where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried, the Chief Medical Examiner shall authorize such investigation and shall send a copy of the report to the appropriate attorney for the Commonwealth who shall communicate such report to a judge of the appropriate circuit court. Such judge may order that the body be exhumed and an autopsy performed thereon by the Chief Medical Examiner or by an Assistant Chief Medical Examiner. The pertinent facts disclosed by the autopsy shall be communicated to the judge who ordered it.

B. Any party in interest may petition the judge of the circuit court exercising jurisdiction over the place of interment and, upon proper showing of sufficient cause, such judge may order the body exhumed.

Reviser's Note: Source (A.)-§ 32-31.19. This revised section clarifies and broadens the criteria for exhumation of a body. Subsection B. is new.

§ 32.1-287. Authority of Chief Medical Examiner or deputies to provide organs, glands, eyes, other tissues for transplant or therapy.—In any case (i) where a patient is in immediate need of a body organ, gland, eye or other tissue as a transplant or for therapy, (ii) where a dead human body which may provide a suitable body organ, gland, eye or other tissue for transplant or therapy comes under the jurisdiction of the Chief Medical Examiner, (iii) where the viability of such body organ, gland, eye or other tissue cannot be maintained for the time necessary to contact the next of kin of the decedent, (iv) where no known objection by the next of kin is foreseen by the Chief Medical Examiner or an Assistant Chief Medical Examiner, and (v) where providing such body organ, gland, eye or other tissue will not interfere with the subsequent course of the investigation or autopsy or alter the postmortem facial appearance of the decedent, the Chief Medical Examiner or any of his Assistant Chief Medical Examiners may, in his discretion, provide such body organ, gland, eye or other tissue on the request of the transplanting surgeon, the physician prescribing the therapy or the appropriate tissue, organ or eye bank operating in accordance with the laws of Virginia.

Reviser's Note: Source § 32-31.22. The authority of the Chief Medical Examiner or his assistants to authorize the removal of an organ or eye for purposes of transplant is continued. Added are provisions for the use of glands and other tissue for therapy.

§ 32.1-288. Disposition of dead body; how expenses paid.—After any investigation authorized or required pursuant to this article has been completed, including an autopsy if one is performed, the dead body may be claimed by the relatives or friends of the deceased person for disposition. The claimant shall bear the expenses of such disposition except as provided herein. If no person claims the body, the Commissioner may accept the body for scientific study as provided in Article 3 of this chapter. If the Commissioner refuses to accept the body, the sheriff of the county or city where death occurred shall take custody of the body for proper disposition. The reasonable expenses of disposition of the body incurred by such sheriff or by the claimant to the extent such claimant is financially unable to pay them shall be borne by the county or city where death occurred or, if the deceased person was a resident of Virginia at the time of death, by the county or city of residence. No such expenses shall be paid by such county or city until allowed by an appropriate court in such county or city. If the deceased person has estate out of which burial expenses can be paid, either in whole or in part, such estate shall be taken for such purpose before

any expense under this section is imposed upon any person, county or city.

Reviser's Note: Source § 32-31.21. If no person claims the body, the Commissioner is authorized to accept it for scientific study pursuant to Chapter 8, Article 3. If the Commissioner does not accept the body, it shall be disposed of by the authorities of the jurisdiction where death occurred.

Article 2.

Anatomical Gifts.

§ 32.1-289. Definitions.—As used in this article:

1. "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.

3. "Donor" means an individual who makes a gift of all or part of his body.

4. "Hospital" means a hospital licensed, accredited or approved under the laws of any state and a hospital operated by the United States government, a state, or a subdivision thereof which is not required to be licensed under state laws.

5. "Part" includes organs, tissue, eyes, bones, glands, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts."

6. "Person" includes, in addition to the entities enumerated in paragraph 4. of § 32.1-3, a government and a governmental subdivision or agency.

7. "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

8. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Reviser's Note: Source § 32-364.3.

§ 32.1-290. Persons who may execute anatomical gift; when gift may be executed; examination of body authorized; rights of donee paramount.—A. Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purposes specified in § 32.1-291, the gift to take effect upon death.

B. Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death and there is no actual notice of contrary indications by the decedent and no actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in § 32.1-291:

1. The spouse,

2. An adult son or daughter,

3. Either parent,

4. An adult brother or sister,

5. A guardian of the person of the decedent at the time of his death, or

6. Any other person authorized or under obligation to dispose of the body.

C. If the donee has actual notice of contrary indications by the decedent or that a gift by a

member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection B. may make the gift after death or immediately before death.

D. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

E. The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection E. of § 32.1-295.

Reviser's Note: Source § 32-364.4

§ 32.1-291. Persons who may become donees; purposes for which anatomical gifts may be made. —The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

1. Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

2. Any accredited medical or dental school, college or university, for education, research, advancement of medical or dental science or therapy; or

3. Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

4. Any specified individual for therapy or transplantation needed by him.

Reviser's Note: Source § 32-364.5.

§ 32.1-292. Manner of executing anatomical gifts.—A. A gift of all or part of the body under subsection A. of § 32.1-290 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

B. A gift of all or part of the body under subsection A. of § 32.1-290 may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

C. The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

D. Notwithstanding subsection C. of § 32.1-295, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose. In the case of a gift of eyes, in the absence of a designation by the donor or if such designee is not available, the donee or other person authorized to accept the gift may employ or authorize: (1) any surgeon or physician; or (2) any funeral service licensee or embalmer licensed in this State who has successfully completed a course in eye enucleation in any accredited medical school in the United States; or (3) any technicians who can document the successful completion of a course for ophthalmic medical assistants, provided by the American Association of Ophthalmology, and in addition has proof of successful completion of a course in eye enucleation as outlined in this subsection D. (2), to enucleate eyes for such purpose. In the case of a gift of skin, in the absence

of a designation by the donor or if such designee is not available, the donee or other person authorized to accept the gift may employ or authorize to perform the appropriate procedures (i) any physician or surgeon or (ii) any technician approved by the University of Virginia Skin Bank as qualified to perform the act of skin harvesting; and no such physician, surgeon or technician so authorized or employed shall have any liability, civil or criminal, for the skin harvesting.

E. A surgeon, physician, funeral service licensee, embalmer or ophthalmic assistant as defined under D. (3) acting in accordance with the terms of this subsection shall not have any liability, civil or criminal, for the eye enucleation.

Reviser's Note: Source § 32-364.6. There are proposed changes in subsections D. and E. to reflect new terminology of "funeral service licensee" as defined in § 54-260.67 (3). Deleted from the revised draft are references to "funeral directors".

§ 32.1-293. Delivery of document of gift.—If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Reviser's Note: Source § 32-364.7.

§ 32.1-294. Amendment or revocation of gift.—A. If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

1. The execution and delivery to the donee of a signed statement, or

2. An oral statement made in the presence of two persons and communicated to the donee, or

3. A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

4. A signed card or document found on his person or in his effects.

B. Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection A. or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

C. Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection A.

Reviser's Note: Source § 32-364.8.

§ 32.1-295. Rights and duties at death.—A. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body shall vest in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

B. The provisions of Article 3 of this chapter shall be applicable whenever a gift is made of a body for the purpose of medical or dental education, scientific study, research or advancement of medical or dental science and (i) no donee is specified or (ii) the donee requests the Commissioner to accept the body for distribution as provided in such article and the Commissioner accepts the body.

C. The time of death shall be determined by a physician who attends the donor at his death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

D. A person who acts in good faith in accord with the terms of this article, or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

E. The provisions of this article are subject to the provisions of § 32.1-285.

Reviser's Note: Source § 32-364.9. New subsection B. directs the manner of disposition when a person has executed donation papers for his body to be used for scientific study pursuant to Title 32.1, Chapter 8, Article 3, or if the donor has executed donation papers and has failed to indicate any specific donee.

§ 32.1-296. Determination of death.—The provisions of § 32-364.3:1 shall be applicable for the purposes of this article.

Reviser's Note: New section.

§ 32.1-297. Action for implied warranty in connection with transfer of blood or human tissue.—No action for implied warranty shall lie for the procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissue such as corneas, bones, or organs for the purpose of injecting, transfusing or transplanting any of them into the human body except where any defects or impurities in the said whole blood, plasma, blood products, blood derivatives and other human tissue such as corneas, bones, or organs are detectable by the use of established medical and technological procedures employed pursuant to the standards of local medical practice.

Reviser's Note: Source § 32-364.2. This section, which presently is in a separate Chapter 19.1, is inserted here for clarity. There is no change in text. Proposed to be deleted are provisions for the interstate uniformity of interpretation and the original title of the uniform act.

Article 3.

Use of Dead Human Bodies for Scientific Study.

Reviser's Note: This article has been extensively revised in order to modernize the language, which dates from the Code of 1919 or earlier, to reflect present practice.

§ 32.1-298. Notification of Commissioner and delivery of bodies.—Any person having charge or control of any dead human body which is unclaimed for disposition, which is required to be buried at the public expense, or which has been lawfully donated for scientific study shall notify the Commissioner whenever and as soon as any such body comes to his possession, charge or control and shall, without fee or reward, permit the Commissioner or his agents to remove such body, to be used for the advancement of health science.

Reviser's Note: Source § 32-356. Directs that any person who finds himself in charge of a deceased human body which is unclaimed by friends or relatives for burial or which has been lawfully donated pursuant to Chapter 8, Article 2 of the title shall direct the body to the State Anatomic Division, under the State Health Commissioner, so that it may be used for scientific study.

§ 32.1-299. Distribution of bodies.—A. The bodies received pursuant to §§ 32.1-298 and 32.1-288 shall be distributed by the Commissioner to institutions and individuals as they may be needed for the purposes of scientific education and training in health and related subjects as follows:

1. first, to the medical schools in Virginia;

2. second, equitably to the several colleges and schools of this Commonwealth authorized by law to teach health science and issue diplomas and such physicians and surgeons as the Commissioner may designate;

3. Third, to colleges and schools in other states and the District of Columbia authorized by law to teach health science and issue diplomas.

B. Before any institution or individual may receive any body pursuant to this section, such institution or individual shall have given a bond to the Commonwealth in the penalty of one thousand dollars with condition that any body received shall be used only for scientific education and training in health and related subjects. Evidence of such bond shall be filed with the Commissioner.

C. All expenses incurred in the distribution and delivery of bodies pursuant to this section shall be paid by those receiving the bodies in such amount as may be prescribed by the Commissioner.

D. The Commissioner is authorized to employ carriers to effect the distribution of dead human bodies pursuant to this section. Any carrier so employed shall obtain a receipt by name, or, if the name be unknown, by a description for each body delivered by him and shall deposit such receipt with the Commissioner.

Reviser's Note: Sources (A.)-§ 32-357; (B.)-§ 32-360; (C.)-§ 32-363; and (D.)-§ 32-358. Revises present cumbersome language and makes explicit the priority or health training institutions and professionals who are permitted to receive the anatomical material for scientific study. Subsection B. retains the provision that any institution or health professional receiving anatomic material post a performance bond to assure the appropriate use of the material. Subsection C. continues the provision that all expenses of the Anatomic Division are to be borne by the users thereof. Modernized language to permit the Anatomic Division (Commissioner) to transport dead human bodies and to require records thereof to be kept is found in subsection D.

§ 32.1-300. Records of bodies distributed.—The Commissioner shall keep a record of all bodies received and distributed, together with data pertaining to the disposition thereof.

Reviser's Note: Source § 32-355.

§ 32.1-301. Burial or cremation of bodies.—After the bodies distributed pursuant to § 32.1-299 have been used for the purpose of instruction, they shall be decently interred or cremated by the institution or individual receiving them.

Reviser's Note: Source § 32-359. Allows user agencies to cremate the remains after the scientific studies are completed.

§ 32.1-302. Importation of anatomical material.—The Commissioner may, in his discretion, on the application of any person, empower such person to import into this Commonwealth and traffic in such anatomical material and pathological specimens as the Commissioner may designate.

Reviser's Note: Source § 32-362.

§ 32.1-303. Penalty for trafficking in bodies.—Except as provided in §§ 32.1-299 and 32.1-302, if any person sell or buy any dead human body, or in any way traffic in the same, or transmit or convey, or procure in order to be transmitted or conveyed, any such body for the purpose of trafficking in the same to any place outside of this Commonwealth, he shall be guilty of a Class 1 misdemeanor.

Reviser's Note: Source § 32-361. Continues the prohibition on improper trafficking in dead human bodies. Defines the offenses as Class 1 misdemeanors. The present penalty is a fine up to $200 or up to one year in jail.

§ 32.1-304. General penalty for violation.—If any person fail or refuse to perform any duty imposed upon him by this article, he shall, unless otherwise provided, be guilty of a Class 3 misdemeanor.

Reviser's Note: Source § 32-364. Continues the general penalty for violation of this article. Defines violations as Class 3 misdemeanors. The present penalty is a fine of $100 - $500.

2. That the regulations of the State Board of Health and those of the Virginia Voluntary Formulary Board in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations promulgated under this act.

3. That no action or other proceeding lawfully commenced by or against an agency or an officer of this Commonwealth in his official capacity in relation to the discharge of official duties, including a proceeding against a licensee, registrant or permittee, shall abate because the agency or officer is superseded by another agency or officer created by this act but the action or other proceeding shall continue to be maintained by or against the successor of such agency or officer.

4. That this recodification of Title 32 as Title 32.1 shall not be construed to require the reappointment of any officer or of any member of a board, council, committee or other appointed body referred to in Title 32.1 and each such officer and member shall continue to serve the term for which appointed pursuant to the provisions of Title 32.

5. That if any clause, sentence, paragraph, subdivision, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

6. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

7. That Title 32 of the Code of Virginia, which title contains Chapters 1 through 29 and §§ 32-1 through 32-448, Article 10 of Chapter 15.1 of Title 54 of the Code of Virginia, which article contains §§ 54-524.109:9 through 54-524.109:18, and Chapter 4 of Title 62.1 of the Code of Virginia, which chapter contains §§ 62.1-45 through 62.1-63, are repealed.

8. That this act shall be deemed to have been enacted prior to any other act enacted in the nineteen hundred seventy-nine regular session of the General Assembly, and any act purporting to amend and reenact any law contained in Title 32 or Title 32.1 of the Code of Virginia is deemed to be added to, amendatory of, or a repealer of, as the case may be, any corresponding law contained in this act; provided, that effect shall be given to any such other, or subsequent act only to the extent of any apparent changes in the law as it existed prior to the commencement of such session.

Reviser's Note: Experience with this statute relating to the Virginia Medical Assistance Program, the Maternal and Child Health Program, and the Crippled Children's Program revealed an unawareness of its existence on the part of the attorneys representing recipients of these programs. By including the statute in the provisions of Title 8.01 it was felt that this problem could be solved.

The only substantive proposal is the inclusion of a provision that reasonable attorneys' fees and costs may not exceed 30% of the amount of the lien recovered.

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 7.1 containing sections numbered 8.01-66.2 through 8.01-66.11 and to repeal Chapter 9 of Title 32 of the Code of Virginia containing §§ 32-138 through 32-146, the added and repealed sections relating to liens for hospital, medical and nursing services.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 7.1 containing sections numbered 8.01-66.2 through 8.01-66.11 as follows:

Article 7.1.

Lien for Hospital, Medical and Nursing Services.

§ 8.01-66.2. Lien against person whose negligence causes injury.—Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse in this Commonwealth, such hospital, physician or nurse shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding five hundred dollars in the case of a hospital, one hundred dollars for all physicians and one hundred dollars in the case of all nurses, on the claim of such injured person or of his personal representative against the person, firm or corporation whose negligence is alleged to have caused such injuries, unless the injured person, his personal representative or members of his family are paid under the provisions of the Workmen's Compensation Act.

Reviser's Note: Source § 32-138.

§ 8.01-66.3. Lien inferior to claim of attorney or personal representative.—The lien provided for in § 8.01-66.2 shall be of inferior dignity to the claim or lien of the attorney of such injured person or of his personal representative for professional services for representing such injured person or his personal representative in his claim or suit for damages for such personal injuries.

Reviser's Note: Source § 32-139.

§ 8.01-66.4. Subrogation.—Any municipal corporation or any person, firm or corporation who may pay the charges for which a lien is provided in § 8.01-66.2 shall be subrogated to such lien.

Reviser's Note: Source § 32-140.

§ 8.01-66.5. Written notice required.—No lien provided for in § 8.01-66.2 shall be created or become effective in favor of a hospital, physician or nurse unless and until a written notice setting forth the name of the hospital, physician or nurse, as the case may be, the name of the injured person, and the date and place such person is alleged to have sustained injuries, shall have been served upon or given to the person, firm or corporation whose negligence is alleged to have caused such injuries or to the attorney for the injured party. Nothing herein contained shall impose liability on anyone who has not received the notice unless liability is imposed by a court as provided in § 8.01-66.8.

Reviser's Note: Source § 32-142.

§ 8.01-66.6. Liability for reasonable charges for services.—The notice set forth in § 8.01-66.5, when served upon or given to the person, firm or corporation whose negligence is alleged to have caused injuries or to the attorney for the injured party, shall have the effect of making such person, firm, corporation or attorney liable for the reasonable charges for the services rendered the injured person to the extent of the amount paid to or received by such injured party or his personal representative exclusive of attorney's fees, but not in excess of the maximum amounts prescribed in § 8.01-66.2.

Reviser's Note: Source § 32-143.

§ 8.01-66.7. Hearing and disposal of claim of unreasonableness.—If the injured person questions the reasonableness of the charges made by a hospital, nurse or physician claiming a lien pursuant to § 8.01-66.2, the injured person or the hospital, physician or nurse may file, in the court that would have jurisdiction of such claim if such claim were asserted against the injured person by such hospital, physician or nurse, a petition setting forth the facts. The court shall hear and dispose of the matter in a summary way after five days' notice to the other party in interest.

Reviser's Note: Source § 32-145.

§ 8.01-66.8. Petition to enforce lien.—If suit is instituted by an injured person or his personal representative against the person, firm or corporation allegedly causing the person's injuries, a hospital, physician or nurse, in lieu of proceeding according to §§ 8.01-66.5 to 8.01-66.7, may file in the court wherein such suit is pending a petition to enforce the lien provided for in § 8.01-66.2. Such petition shall be heard and disposed of in a summary way.

Reviser's Note: Source § 32-146.

§ 8.01-66.9. Lien in favor of Commonwealth on claim for personal injuries.—Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or receives medical attention or treatment from any physician, or receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type medical or rehabilitative device or apparatus which are paid for pursuant to the Virginia Medical Assistance Program, the Maternal and Child Health Program or the Crippled Children's Program, the Commonwealth shall have a lien for the total amount paid for such medical services or equipment and devices supplied, on the claim of such injured person or of his personal representative against the person, firm, or corporation whose negligence is alleged to have caused such injuries, unless the injured person, his personal representative or members of his family are paid under the provisions of Title 65.1 (§ 65.1-1 et seq.); provided, however, that such lien shall be subject to the payment of reasonable attorney's fees and costs not to exceed thirty per centum of the amount of the lien recovered.

Reviser's Note: Source § 32-139.1. The 30% limit is new.

§ 8.01-66.10. Death claims settled by compromise or suit.—In case of personal injuries resulting in death and settlement therefor by compromise or suit under the provisions of §§ 8.01-50 to 8.01-56, the liens provided for in this article may be asserted against the recovery, or against the estate of the decedent, but not both. If asserted against the recovery and paid, such liens shall attach pro rata to the amounts received respectively by such beneficiaries as are designated to receive the monies distributed and in their respective amounts; and such beneficiaries, or the personal representative for their benefit, shall be subrogated to the liens against the estate of such decedent provided for by § 64.1-157.

Reviser's Note: Source § 32-141.

§ 8.01-66.11. Necessity for settlement or judgment.—Nothing contained in this article shall be construed as imposing liability on any person, firm or corporation whose negligence is alleged to have caused injuries or on the attorney for the injured party where no settlement is made, or, in case of an attorney, where no funds come into his hands, or where no judgment is obtained in favor of such injured party or his personal representative.

Reviser's Note: Source § 32-144.

2. That Chapter 9 of Title 32 of the Code of Virginia containing §§ 32-138 through 32-146 is repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: Source § 54-276.9. The Good Samaritan section is proposed to be transferred without material change to Title 8.01 because it is felt that most practitioners would look first in Title 8.01 for such a statute.

A BILL to amend the Code of Virginia by adding a section numbering 8.01-225 and to repeal § 54-276.9 of the Code of Virginia, the added and repealed sections relating to exemption from liability for persons rendering emergency care.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-225 as follows:

§ 8.01-225. Persons rendering emergency care exempt from liability.—A. Any person who, in good faith, renders emergency care or assistance, without compensation, to any injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

B. Any emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance.

C. Any person having attended and successfully completed a course in cardiopulmonary resuscitation, which has been approved by the State Board of Health, who in good faith and without compensation renders or administers emergency cardiopulmonary resuscitation, cardiac defibrillation or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures; and such individual shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. For the purposes of this section, the term "compensation" shall not be construed to include the salaries of police, fire or other public officials or emergency service personnel who render such emergency assistance, nor the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of § 45.1-101.1 or 45.1-101.2.

F. Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or wilful misconduct.

G. For the purposes of this section, an emergency medical care attendant or technician shall be deemed to include a person licensed or certified as such or its equivalent by any other state when he is performing services which he is licensed or certified to perform by such other state in caring for a patient in transit in this State, which care originated in such other state.

2. That § 54-276.9 of the Code of Virginia is repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

A BILL to amend and reenact §§ 15.1-53, 15.1-282, 15.1-611 and 15.1-646 of the Code of Virginia, to amend the Code of Virginia by adding in Title 15.1 a section numbered 15.1-526.3 and chapters numbered 37 and 38 containing sections numbered 15.1-1514 through 15.1-1602, and to repeal §§ 32-130 through 32-135 of the Code of Virginia and chapters 13 and 14 of Title 32 of the Code of Virginia containing §§ 32-212 through 32-290.3, so as to make certain adjusting changes in accordance with the revision of Title 32 of such Code, relating generally to health, which revision repeals Title 32 and enacts Title 32.1 in lieu thereof.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-53, 15.1-282, 15.1-611 and 15.1-646 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 15.1 a section numbered 15.1-526.3 and chapters numbered 37 and 38 containing sections numbered 15.1-1514 through 15.1-1602, as follows:

§ 15.1-53. Joint county officers may be appointed or elected.—Any two or more adjoining or adjacent counties may, as hereinafter provided and when deemed advisable by their respective boards of supervisors, except when such officer is to be elected by the people, when such consent on behalf of the board of supervisors shall not be necessary, conjointly employ, appoint or elect, in the manner provided by law, *any one or more of the following officers:* a county road manager, a county road engineer, ~~a county health officer,~~ a county superintendent of public welfare, ~~and~~ any other ministerial or executive officer permitted by Article VII, § 4 of the Constitution of Virginia, ~~or any one or more of such officers~~ *and, if such counties have not entered contracts with the State Board of Health for the operation of the county health departments, the health director* .

Reviser's Note: Generally, these proposed changes are to conform to the provisions of Chapter 1, Article 5 (Local Health Departments) of proposed Title 32.1.

§ 15.1-282. Solid and hazardous waste management.—The governing bodies of counties , *cities and towns* are authorized in their discretion to acquire by lease, gift, purchase or condemnation, land ~~for the purpose of providing a dumping place for waste material including abandoned automobiles~~ , *facilities or equipment to be utilized in solid and hazardous waste management as defined in § 32.1-177* . ~~No deleterious substance, which might be or become a nuisance to adjoining property, shall be deposited on such dumps nor any waste material from manufacturing or industrial plants.~~ The governing bodies of counties , *cities and towns* are vested with the power of eminent domain insofar as the exercise of such power is necessary for the acquisition of lands for the purposes of this section and in the exercise of such power are vested with such powers and rights as are or which may hereafter be vested by law in the governing bodies of counties , *cities and towns* and the procedure in such condemnation suit or procedure shall be under the restrictions provided by the general statutes of this ~~State~~ *Commonwealth* relative to the condemnation of land so far as the same may be applicable and are not in conflict with provisions of this section. ~~All actions heretofore taken by the governing body of any county are hereby validated.~~

~~In any county in which a dump for waste material has been established as described above, it shall be unlawful to dump any such waste material including abandoned automobiles except with the written consent of the owner of the land. Any person dumping, or causing to be dumped, any waste material including abandoned automobiles, except on public dumps or with the written consent of the landowner, in any county in which such a dump has been established shall be guilty of a misdemeanor and punished accordingly.~~

Reviser's Note: The subject matter of this statute is covered in the Solid and Hazardous Waste Management article of proposed Title 32.1 (Chapter 6, Article 3). Parts of the section are retained or amended for the purpose of granting local governments the power to acquire land for waste management purposes.

§ 15.1-526.3. Right to establish hospitals.—The governing body of any county may establish and operate hospitals in such county. If such governing body cannot agree on the terms of purchase

with the owner of land needed for such hospital, it shall have the right to acquire title to such land by eminent domain.

Reviser's Note: Sources §§ 32-130 and 32-131. Deleted are §§ 32-132, 32-133, 32-134, 32-134.1, 32-135 and 32-136. Most of the provisions therein are covered by §§ 15.1-881, 15.1-522, 15.1-25 and 15.1-862. Transferred are §§ 32-137 and 32-137.1.

§ 15.1-611. Department of health.–The department of health shall consist of the ~~county~~ health ~~officer,~~ *director* who shall be ~~chosen from a list of eligibles furnished by the State Board of Health,~~ *appointed as provided in the applicable provisions of Article 5 of Chapter 1 of Title 32.1* and who shall be head thereof, and the other officers and employees of such department. The head of such department shall exercise all the powers conferred and shall perform all the duties imposed upon the local health ~~officer and the local board of health~~ *director* by general law, not inconsistent herewith. He shall also perform such other duties as may be imposed upon him by the board of county supervisors *or, if the health department is operated under contract with the State Board of Health, as may be specified in such contract .*

If the board of county supervisors ~~may select~~ *appoints a local board of health as provided in § 32.1-32, it shall consist of* two qualified citizens of the county, who shall serve without pay, and ~~who together with~~ the county health ~~officer shall constitute the county board of health~~ *director* . Such board ~~shall advise and cooperate with the department of health and~~ shall have power to adopt necessary rules and regulations, not in conflict with law, concerning the department. The board may at any time be abolished by the board of county supervisors.

Reviser's Note: Generally, these proposed changes are to conform to the provisions of Chapter 1, Article 5 (Local Health Departments) of proposed Title 32.1.

§ 15.1-646. Department and board of health.–The department of health shall consist of the county health ~~officer,~~ *director* who shall be ~~chosen from a list of eligibles furnished by the State Board of Health.~~ *appointed as provided in the applicable provisions of Article 5 of Chapter 1 of Title 32.1* and who shall be head thereof, and the other officers and employees of such department. The head of such department shall exercise all the powers conferred and shall perform all the duties imposed upon the local health ~~officer and the local board of health~~ *director* by general law, not inconsistent herewith. He shall also perform such other duties as may be imposed upon him by the board of county supervisors *or, if the health department is operated under contract with the State Board of Health, as may be specified in such contract .*

If the board of county supervisors ~~may select~~ *appoints a local board of health as provided in § 32.1-32, it shall consist of* two qualified citizens of the county, who shall serve without pay, and ~~who together with~~ the county health ~~officer shall constitute the county board of health~~ *director* . Such board ~~shall advise and cooperate with the department of health and~~ shall have power to adopt necessary rules and regulations, not in conflict with law, concerning the department. The board may at any time be abolished by the board of county supervisors.

~~In the county of Henrico, the county health officer may be named the director of health.~~

Reviser's Note: Generally, these proposed changes are to conform to the provisions of Chapter 1, Article 5 (Local Health Departments) of proposed Title 32.1.

Reviser's Note: The chapter below, presently located in Title 32, was felt to be more appropriately placed in Title 15.1. Deleted from the draft is a section on federal aid (present § 32-290), which is included in Chapter 4, Article 2 (Medical Care Facilities Development) of proposed Title 32.1.

Chapter 37.

Hospital or Health Center Commissions.

§ 15.1-1514. Creation of commission.–In each city, county and town, and in each group of two or more of such political subdivisions of which the governing bodies thereof shall declare by proper

resolution that there is need of a hospital or health center to function therein, there shall be created a public body corporate, with such public and corporate powers as are set forth in this chapter, to be known as the hospital or health center commission thereof; provided, however, that such commission shall not transact any business or exercise its powers hereunder until or unless the governing body of the subdivision, or the governing bodies of the subdivisions in the event more than one unite for the purpose, shall declare that there is need for a hospital or health center commission to function therein.

Reviser's Note: Source § 32-276.

§ 15.1-1515. Definitions.—As used in this chapter, "hospital" or "health center" shall mean any facility for the examination, care or treatment of sick or infirm persons, including nursing homes. "Bonds" as used in this chapter shall include any interest bearing obligation including promissory notes.

Reviser's Note: Source § 32-276.1.

§ 15.1-1516. When governing bodies may declare need for commission.—The governing body or bodies, as the case may be, may adopt a resolution declaring that there is need for a hospital or health center commission in such political subdivision or subdivisions, if it or they shall find that the public health and welfare, including the health and welfare of persons of low income in such subdivision or subdivisions and surrounding area require the acquisition, construction or operation of public hospital facilities for the inhabitants thereof.

Reviser's Note: Source § 32-277.

§ 15.1-1517. Effect of adoption of resolution.—In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the hospital or health center commission, such commission shall be conclusively deemed to have become created as a body corporate, and to have become established and authorized to transact business and exercise its powers hereunder, upon proof of the adoption of a resolution by the governing body of each city, county or town for which the commission is created declaring that there is need for such commission, and, if more than one political subdivision is involved, that it unites with the other political subdivisions in declaring such needs. A copy of such resolution, duly certified by the clerk of the city, county or town by which it is adopted, shall be admissible in evidence in any suit, action or proceeding.

Reviser's Note: Source § 32-278.

§ 15.1-1518. Members of commission; quorum; expenses; removal and vacancies.—A hospital or health center commission shall consist of the following number of members based upon the number of political subdivisions participating: for one political subdivision, five members; for two, six members; for three, six members; for four, eight members; and for more than four, one member for each of the participating subdivisions. The respective members shall be appointed by the governing bodies of the subdivisions they represent, may be members of such governing bodies, shall be residents of such subdivisions, and shall be appointed for such terms as the appointing body shall designate. The members of the commission so appointed shall constitute the commission, and the powers of the commission conferred by this chapter shall be vested in and exercised by the members in office. A majority of the members in office shall constitute a quorum. The commission shall elect its own chairman and shall adopt rules and regulations for its own procedure and government. The members of the commission shall receive no compensation for their services but shall be paid their actual expenses incurred in the performance of their duties. Any member of the commission may be removed at any time by the governing body appointing him, and vacancies on the commission shall be filled for the unexpired terms.

Reviser's Note: Source § 32-279.

§ 15.1-1519. Powers of commission.—Any hospital or health center commission established hereunder shall have all powers necessary or convenient to carry out the general purposes of this chapter, including the following powers in addition to others herein granted:

1. In general. - To sue and be sued; to adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or

convenient to the exercise of its powers.

2. Officers, agents and employees. - To employ such technical experts and such other officers, agents and employees as it may require, to fix their qualifications, duties and compensation and to remove such employees at pleasure.

3. Acquisition of property. - To acquire within the territorial limits of the political subdivisions for which it is formed, by purchase, lease, gift or otherwise, whatever lands, buildings and structures may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining and operating one or more hospitals or health centers.

4. Construction. - To acquire, establish, construct, enlarge, improve, maintain, equip and operate any hospital or health center, and any other facilities and services for the care and treatment of sick persons.

5. Rules and regulations for management. - To make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its facilities and properties.

6. Acceptance of donations. - To accept gifts and grants from the Commonwealth or any political subdivision thereof and from the United States and any of its agencies; and to accept donations of money, personal property or real estate, and take title thereto from any person, firm, corporation or association.

7. Rules and regulations as to patients. - To make rules and regulations governing the admission, care and treatment of patients in such hospital or health center, to classify patients as to charges to be paid by them, if any, and to determine the nature and extent of the service to be rendered patients.

8. Federal and State aid. - To comply with the provisions of the laws of the United States and the Commonwealth, and any rules and regulations made thereunder, for the expenditures of federal or State money in connection with hospitals or health centers and to accept, receive and receipt for federal and State money granted the commission, or granted any of the political subdivisions for which it is formed, for hospital or health center purposes.

9. Borrowing money. - To borrow money upon its bonds, notes, debentures, or other evidences of indebtedness issued for the purpose only of acquiring, constructing, improving, furnishing or equipping buildings or structures for use as a hospital or health center, and to secure the same by pledges of its revenues as hereafter provided.

10. Execution of instruments for borrowing. - To execute all instruments necessary or convenient in connection with the borrowing of money and the issuance of bonds as herein authorized.

11. Leases and construction agreements. - To enter into leases and agreements with persons, firms, corporations, associations or other groups which provide for the construction and/or operation of a hospital or health center by such persons, firms, corporations, associations or other groups on land of the commission.

12. Management agreements. - To contract with persons, firms, corporations, associations or other groups as it may deem appropriate for the management and operation of any hospital or health center subject to the control of the commission; however, the commission may agree that it will charge such rates for service as will enable it to make reasonable compensation for such management and operation.

Reviser's Note: Source § 32-280.

§ 15.1-1520. Appropriations to commission.—Any political subdivision for which the commission is created is authorized to make appropriations to the commission from available funds, or from funds provided for the purpose by bond issues, for the acquisition of land or improvements to land, and/or the construction, improvement, maintenance and operation of any hospital or health center operated or controlled or proposed to be operated or controlled by the commission. The political

subdivision may also transfer to the commission, with or without consideration, real or personal property for any or all of such purposes.

Reviser's Note: Source § 32-281.

§ 15.1-1521. Issuance of bonds by political subdivisions and validation thereof.—Any political subdivision for which the commission is created may issue its general obligation bonds in the manner provided in the Public Finance Act in furtherance of the establishment, construction and enlargement of a hospital or health center; and all such bonds issued prior to June one, nineteen hundred seventy-five, for such purposes by any political subdivision are hereby ratified, validated and confirmed, and all proceedings taken prior to such date to authorize the issuance of bonds for such purposes by any political subdivision are hereby ratified, validated and confirmed, and all such bonds may be issued pursuant to the Public Finance Act.

Reviser's Note: Source § 32-281.1.

§ 15.1-1522. Issuance and sale of bonds.—Any bonds issued by a hospital or health center commission may be issued in one or more series, shall bear such date or dates, mature at such time or times, bear interest at such rate or rates payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, as the commission by resolution may prescribe. Such bonds may be sold at public or private sale for such price or prices as the commission shall determine.

Reviser's Note: Source § 32-282. Deleted is a 4% limit on interest rates.

§ 15.1-1523. Provisions to secure payment of bonds.—Any resolution or resolutions of the commission authorizing the issuance of any bonds may contain provisions, which shall be a part of the contract with the holders of the bonds, pledging any or all revenues of the hospital or health center to secure the payment of the interest on such bonds and to create a sinking fund to retire the principal thereof at maturity; providing for such schedule of fees and charges as will produce funds sufficient to pay operating costs and debt service until such bonds are retired; and prescribing the rights, obligations, powers and duties of the commission, the trustee under any trust indenture under which the bonds are issued, and the bondholders, in connection with or pertaining to such bonds.

Reviser's Note: Source § 32-283.

§ 15.1-1524. Bonds made legal investments.—Any bonds issued pursuant to the authority of this chapter are hereby made securities in which all public officers and bodies of this Commonwealth and all political subdivisions thereof, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, in the Commonwealth may properly and legally invest funds in their control.

Reviser's Note: Source § 32-284.

§ 15.1-1525. Bonds payable from revenues of hospital or health centers.—Any bonds issued under this chapter shall be payable only from the revenues and receipts of the hospital or health center for the acquisition, establishment or construction of which the bonds were issued. The bonds and other obligations of the commission shall not be a debt of any city, county or town or of the Commonwealth, and neither the members of the commission nor any person executing the bonds or other obligations shall be liable personally thereon by reason of the issuance thereof.

Reviser's Note: Source § 32-285.

§ 15.1-1526. Property of commission exempt from foreclosure or execution sale and judgment lien.—No interest of the commission in any property, real or personal, shall be subject to sale by foreclosure of a mortgage, trust indenture, or any other instrument thereon or relating thereto, either through judicial proceedings or the exercise of a power of sale contained in the instrument. All property of the commission shall be exempt from levy and sale by virtue of an execution, and no execution or judicial process shall issue against such commission. No judgment against the

commission shall be a charge or lien upon its property, real or personal. Nothing contained in this section shall prohibit the owner of a leasehold interest granted by the commission from granting a lien or other security interest in his leasehold which would be subject to sale or foreclosure as provided in any instrument creating the lien or other security interest.

Reviser's Note: Source § 32-286.

§ 15.1-1527. Receiver.—The commission may, by its trust indenture given to secure bond issues or other obligations, provide for the appointment of a receiver of the hospital or health center or that part thereof acquired or constructed from funds received from a sale of bonds secured by the pledge of its revenues. If any such receiver be appointed, he may enter and take possession of such hospital or health center or part thereof, and operate and maintain same, and collect and receive all fees, rents, revenues or other charges arising therefrom in the same manner as the commission might do, and keep such moneys in a separate account or accounts, and apply the same in accordance with the obligations of the commission as the court shall direct.

Reviser's Note: Source § 32-287.

§ 15.1-1528. Eminent domain.—The commission shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this chapter after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The commission may exercise the power of eminent domain pursuant to the provisions of any applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain by any city, county or town.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city, county or town or to any government or to any religious or charitable corporation may be acquired without its consent.

Reviser's Note: Source § 32-288.

§ 15.1-1529. Records and reports.—The commission shall keep and preserve complete records of its operations and transactions, which records shall be open to inspection by the participating subdivisions at all times. It shall make reports to such subdivisions annually and at such other times as they may require.

Reviser's Note: Source § 32-289.

§ 15.1-1530. When court may enter order declaring need for commission no longer exists.—Whenever it shall appear to the members of a commission that the need, as stated in § 15.1-1516, for such commission no longer exists, the members may, after ten days notice to the governing body of the county, city, town or combination thereof establishing a commission pursuant to §§ 15.1-1514 and 15.1-1516, file a petition with the circuit court in such political subdivision or in any of such political subdivisions. Upon the production of satisfactory evidence in support of such petition, the court may, in its discretion, enter an order declaring that the need for such commission in the county, city, town or combination thereof no longer exists and approving a plan for the winding up of the business of the commission, the payment or assumption of its obligations, and the transfer of its assets.

Reviser's Note: Source § 32-290.1.

§ 15.1-1531. Finality of order; effect.—If the court enters an order as provided in § 15.1-1530 that the need for the commission no longer exists, such order shall be final and, except for the winding up of its affairs in accordance with the plan approved by the court, its authorities, powers and duties to transact business or to function shall cease to exist as of the date set forth in the order of the court.

Reviser's Note: Source § 32-290.2.

§ 15.1-1532. Appeal from order; supersedeas.—Any party aggrieved by such order may apply for an appeal to the Supreme Court of Virginia and a supersedeas may be granted in the same

manner as is now or hereafter shall be provided by law and the rules of court applicable to civil cases.

Reviser's Note: Source § 32-290.3.

Chapter 38.

Hospital Authorities.

Article 1.

In General.

Reviser's Note: It is proposed that this chapter be moved to Title 15.1, a more appropriate placement. No substantive changes are proposed.

§ 15.1-1533. Finding and declaration of necessity.—It is declared that conditions resulting from the concentration of population of various cities of the Commonwealth require the construction, maintenance and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various cities of the Commonwealth there is a lack of adequate hospital facilities available to the inhabitants thereof and that, consequently, many persons, including persons of low income, are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the Commonwealth and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that adequate hospital and medical facilities and care be provided in such concentrated centers of population in order to care for and protect the health and public welfare; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Reviser's Note: Source § 32-213.

§ 15.1-1534. Definitions.—As used or referred to in this chapter unless a different meaning clearly appears from the context:

1. "Authority" or "hospital authority" means a public body and a body corporate and politic organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions hereinafter set forth.

2. "City" means any city in the Commonwealth. "The city" means the particular city for which a particular hospital authority is created.

3. "Council" means the council or other body charged with governing the city.

4. "City clerk" and "mayor" mean the clerk of the council and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor respectively.

5. "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this chapter.

6. "Government" includes the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

7. "Federal government" includes the United States of America, the Federal Emergency

Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

8. "Hospital project" or "project" means all facilities suitable for providing adequate hospital facilities and medical care for concentrated centers of population, and shall also include any and all structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, franchises, machinery, equipment, furnishings, landscaping, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto.

9. "Bonds" shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this chapter.

10. "Trust indenture" includes instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

11. "Contract" means any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

12. "Real property" includes lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgments, mortgage or otherwise.

13. "Obligee of the authority" or "obligee" includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a hospital project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America when it is a party to any contract with the authority.

14. "Cost," as applied to a hospital project, means all or any part of the cost of acquisition, construction, alteration, enlargement, reconstruction and remodeling of a hospital project, including all lands, structures, real or personal property, interest in land and air rights, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to, during and for a period of time not to exceed two years after completion, provisions for working capital, the cost of architectural engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing the hospital project and such other expenses as may be necessary or incidental to the acquisition and construction of such project, the financing of such acquisition and construction and the placing of the project in operation.

Reviser's Note: Source § 32-214.

§ 15.1-1535. Creation of hospital authorities.—In each city there shall be a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter, to be known as the "hospital authority" of the city.

Reviser's Note: Source § 32-215.

§ 15.1-1536. Not to function until council declares need.— No authority shall transact any business or exercise its powers hereunder until or unless the council of the city, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city.

Reviser's Note: Source § 32-216.

§ 15.1-1537. How need determined.—The determination as to whether there is such need for an authority to function may be made by the governing body on its own motion or upon the filing of a petition, signed by one hundred registered voters of the city, asserting that there is need for an authority to function in such city and requesting that the governing body so declare.

Reviser's Note: Source § 32-217.

§ 15.1-1538. What constitutes need.—The council may adopt a resolution declaring that there is need for a hospital authority in the city if it shall find (i) that there is a lack of adequate hospital facilities and medical accommodations from the operations of private enterprises in the city and surrounding area, or (ii) that the public health and welfare, including the health and welfare of persons of low income in the city and surrounding area, require the construction, maintenance or operation of public hospital facilities for the inhabitants of the city and surrounding area.

Reviser's Note: Source § 32-218.

§ 15.1-1539. Effect and sufficiency of resolution declaring need.—In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution of the governing body declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the conditions enumerated in § 15.1-1538 exist in the city. A copy of such resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

Reviser's Note: Source § 32-219.

§ 15.1-1540. Appointment, qualifications, tenure and compensation of commissioners.—An authority shall consist of not more than fifteen commissioners appointed by the mayor and he shall designate the first chairman. At least two thirds of the commissioners shall be residents of the city; five of the commissioners may be residents of any adjacent city, county or counties. No more than three commissioners shall be practicing physicians. No officer or employee of the city shall be eligible for appointment, nor shall any practicing physician be appointed to such authority in any city having a population of not more than eighteen thousand and not less than seventeen thousand five hundred and bordered by one county and two rivers.

One third of the commissioners who are first appointed shall be designated by the mayor to serve for terms of two years, one third to serve for terms of four years, and one third to serve for terms of six years, respectively, from the date of their appointment. Thereafter, the term of office shall be six years. No person shall be appointed to succeed himself following four successive terms in office but no term of less than six years shall be deemed a term in office for the purposes of this sentence.

A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of a vacancy or vacancies in the office of commissioner by expiration of term of office or otherwise, the remaining commissioners shall submit to the mayor nominations for appointments. The mayor may successively require any number of additional nominations and shall have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners currently in office shall constitute a quorum. The mayor may file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioners. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

Reviser's Note: Source § 32-220.

§ 15.1-1541. Officers and agents.—When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts, and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Reviser's Note: Source § 32-221.

§ 15.1-1542. Effect of inclusion of existing hospital.—In the event that the authority and the

trustees, directors or managers of any nonprofit or charitable hospital in a city should thereafter agree upon and consummate a transaction whereby the nonprofit or charitable hospital should thereafter be included within the hospital project or projects of the authority, then the number of commissioners of such authority shall be increased to not exceeding fifteen and the additional commissioners shall be appointed by the mayor from nominations of the commissioners then in office, and the terms of the additional commissioners shall be arranged by the mayor in making such appointments as follows:

The terms of one third of the commissioners shall expire in two years or less, one third in four years or less, and one third in six years or less, concurrently with the expiration of the terms of the commissioners then in office.

Reviser's Note: Source § 32-222.

§ 15.1-1543. Authority and commissioners must comply with law and contracts.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this chapter and the laws of the Commonwealth and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

Reviser's Note: Source § 32-223.

§ 15.1-1544. Removal of commissioner on charges of mayor.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him, which may be made by the mayor, at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Reviser's Note: Source § 32-225.

§ 15.1-1545. Removal of commissioner on charges of obligee.—Any obligee of the authority may file with the mayor written charges that the authority is violating wilfully any law of the Commonwealth or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such wilful violation.

Reviser's Note: Source § 32-226.

§ 15.1-1546. Service on commissioner by mail.—If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the city where the authority is located, such charges shall be deemed served upon the commissioner if mailed to him at his last known address as it appears upon the records of the authority.

Reviser's Note: Source § 32-227.

§ 15.1-1547. When commissioner deemed to have acquiesced in violation.—A commissioner shall be deemed to have acquiesced in a wilful violation by the authority of a law of this Commonwealth or of any term, provision or covenant contained in the contract to which the authority is a party, if, before a hearing is held on charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

Reviser's Note: Source § 32-228.

§ 15.1-1548. Record of removal proceedings.—In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioner and the findings thereon.

Reviser's Note: Source § 32-229.

§ 15.1-1549. Removed commissioner may appeal.—Any commissioner thus removed may, within

ten days after the mayor's action, appeal to the circuit court of the city and the decision of such court shall be final.

Reviser's Note: Source § 32-230.

§ 15.1-1550. Planning and zoning laws.—All hospital projects of an authority shall be subject to the planning and zoning laws, ordinances and regulations applicable to the locality in which the hospital project is situated.

Reviser's Note: Source § 32-231.

§ 15.1-1551. Reports.—The authority shall at least once a year file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this chapter.

Reviser's Note: Source § 32-232.

§ 15.1-1552. Appropriations by city.—The governing body of any city in which the authority is located may make appropriations for the improvement, maintenance or operation of any public hospital or hospital project constructed, maintained, or operated by or to be constructed, maintained or operated by an authority.

Reviser's Note: Source § 32-233.

§ 15.1-1553. Conveyance, lease or transfers of property by a city to an authority.—In order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital project or in order to accomplish any of the purposes of this chapter, any city may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within such city, any real, personal or mixed property including, but not limited to, any existing hospital or hospital project as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital project, and in connection with any such transaction the authority involved may accept such lease, transfer, assignment and conveyance and bind itself to the performance and observance of any agreements and conditions attached thereto.

Reviser's Note: Source § 32-234.

§ 15.1-1554. Chapter controlling.—Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling, provided that nothing in this chapter shall prevent any city from establishing, equipping, and operating a hospital or hospitals or improving or extending existing hospitals and hospital facilities under the provisions of its charter or any general law other than this chapter.

Reviser's Note: Source § 32-235.

Article 2.

Powers.

§ 15.1-1555. In general.—An authority shall constitute a public body and a body corporate and politic with perpetual succession, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. It may sue and be sued and have a seal with power to alter same at pleasure.

Reviser's Note: Source § 32-236.

§ 15.1-1556. Study and investigation concerning plan.—An authority shall have power to investigate into hospital, medical and health conditions and into the means and methods of improving such conditions; to determine where inadequate hospital and medical facilities exist; to

study and make recommendations concerning the plan of any city in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city and surrounding area, including persons of low income in such city and area.

Reviser's Note: Source § 32-237.

§ 15.1-1557. Preparation and operation of hospital projects.—An authority shall have power to prepare, carry out and operate hospital projects.

Reviser's Note: Source § 32-238.

§ 15.1-1558. Additional powers.—Upon authorization of the governing body of the city or county in which the authority is functioning and the governing body of any other county or city, an authority shall have power to prepare, carry out and operate hospital projects and exercise all the powers granted to such authority pursuant to the provisions of this chapter in such other county or city.

Reviser's Note: Source § 32-238.1.

§ 15.1-1559. Clinics and instruction programs.—An authority shall have power to provide and operate outpatient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers and to provide teaching and instruction programs and schools for medical students, internes, physicians and nurses.

Reviser's Note: Source § 32-239.

§ 15.1-1560. Physicians and employees.—An authority shall have power to provide and maintain continuous resident physician and intern medical services; to appoint an administrator or superintendent and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees.

Reviser's Note: Source § 32-240.

§ 15.1-1561. Powers of nonstock corporations.—An authority shall have all powers granted to corporations under the provisions of § 13.1-205.1.

Reviser's Note: Source § 32-240.1.

§ 15.1-1562. Bylaws and rules and regulations.—An authority shall have power to adopt bylaws for the conduct of its business and to adopt necessary rules and regulations for the government of the authority and its employees.

Reviser's Note: Source § 32-241.

§ 15.1-1563. Committees.—An authority shall have power to appoint such committees or subcommittees as it shall deem advisable and fix their duties and responsibilities.

Reviser's Note: Source § 32-242.

§ 15.1-1564. Construction, repair and management.—An authority shall have power to do all things necessary in connection with the construction, improvement, alteration, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospitals and all departments thereof.

Reviser's Note: Source § 32-243.

§ 15.1-1565. Donations.—An authority shall have power to accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations.

Reviser's Note: Source § 32-244.

§ 15.1-1566. Regulating practice and nursing in hospital.—An authority shall have power to determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in such hospital and to establish and maintain a training school for nurses.

Reviser's Note: Source § **32-245.**

§ 15.1-1567. Rules as to patients.—An authority shall have power to make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, any hospital operated by the authority ; to determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves; to maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases.

Reviser's Note: Source § **32-246.**

§ 15.1-1568. Purchases or leases of hospital projects.—An authority shall have power to take over by purchase, lease or otherwise any hospital project located within its boundaries undertaken by any government or by any city.

Reviser's Note: Source § **32-247.**

§ 15.1-1569. Acting with federal government.—An authority shall have power to act as agent for the federal government in connection with the acquisition, construction, operation and management of a hospital project or any part thereof.

Reviser's Note: Source § **32-248.**

§ 15.1-1570. Cooperation with subdivision of Commonwealth.—An authority shall have power:

1. To arrange with any city or with a government (a) for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks, or other places or facilities, (b) for the acquisition by such city or government of property, options or property rights and (c) for the furnishing of property or services in connection with a project;

2. To arrange with the Commonwealth, its subdivisions and agencies, and any county, city or town of the Commonwealth, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority, (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital projects and (c) to lease or rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital project and to establish and revise the rents or charges therefor.

Reviser's Note: Source § **32-249.**

§ 15.1-1571. Purchase or lease of property.—An authority shall have power to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, county, town or government.

Reviser's Note: Source § **32-250.**

§ 15.1-1572. Sale of property.—An authority shall have power to sell, exchange, transfer, or assign any of its property real or personal or any interest therein to any person, firm, corporation, city, county, town or government.

Reviser's Note: Source § **32-251.**

§ 15.1-1573. Owning property.—An authority shall have power to own, hold, clear and improve property and to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable.

Reviser's Note: Source § 32-252.

§ 15.1-1574. Borrowing money.—An authority shall have power to borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided and, in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this chapter.

Reviser's Note: Source § 32-253.

§ 15.1-1575. Contracts.—An authority shall have power to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.

Reviser's Note: Source § 32-255.

§ 15.1-1576. Rules and regulations not to be inconsistent.—An authority shall have power to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority.

Reviser's Note: Source § 32-256.

§ 15.1-1577. Incidental powers.—An authority shall have power, in addition to all of the other powers herein conferred upon it, to do all things necessary and convenient to carry out the powers expressly given in this chapter.

Reviser's Note: Source § 32-257.

§ 15.1-1578. Eminent domain.—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this chapter after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of Title 25 of the Code of Virginia and any applicable statutory provisions in force or hereafter enacted for the exercise of the power of eminent domain by cities.

Property already devoted to a public use may be acquired, provided that no property belonging to any city, town or county or to any government or to any religious or charitable corporation may be acquired without its consent.

Reviser's Note: Source § 32-258.

§ 15.1-1579. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this chapter, the authority is empowered to borrow money and accept grants from the federal government for or in aid of the construction of any hospital project which such authority is authorized by this chapter to undertake, to take over any land acquired by the federal government for the construction of a hospital project, to take over or lease or manage any hospital project constructed or owned by the federal government, and to these ends, to enter into such contracts, trust indentures, leases, or other agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such hospital project. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any hospital project which the authority is empowered by this chapter to undertake.

Reviser's Note: Source § 32-259.

§ 15.1-1580. Security for funds deposited by authorities; deposit in certain savings accounts, etc., authorized.—The authority may by resolution provide that all monies deposited by it shall be secured:

1. By obligations of the United States or of the Commonwealth of a market value equal at all times to the amount of such deposits;

2. By any securities in which trustees, guardians, executors, administrators and others acting in a fiduciary capacity may legally invest funds within their control; or

3. By an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon.

All banks and trust companies are authorized to give any such security for such deposits.

Deposit of such funds in savings accounts and certificates of savings and loan associations which are under State supervision, and of federal associations organized under the laws of the United States and under federal supervision is hereby authorized, provided that such institution's deposits are insured by the Federal Savings and Loan Insurance Corporation, a corporation created pursuant to an act of Congress of the United States, approved June twenty-seven, nineteen hundred thirty-four, and known as the National Housing Act, and amendments thereto.

Reviser's Note: Source § 32-260.

Article 3.

Bonds.

§ 15.1-1581. Authority to issue.—The authority shall have power and is hereby authorized from time to time in its discretion to issue bonds for any of its purposes, including the payment of all or any part of the cost of any hospital project and the refunding of any bonds previously issued by it. Bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed in any statute and without obtaining the consent of any city, town or county, government or any commission, board, bureau or agency of any of the foregoing; and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this chapter.

Reviser's Note: Source § 32-261.

§ 15.1-1582. How payable.—The principal and interest on such bonds shall be payable from such sources as the authority may determine, including (without limiting the generality of the foregoing) (a) its revenues generally, (b) exclusively from the revenues and receipts of a particular hospital project, or (c) exclusively from the revenues and receipts of certain designated hospital projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from any city, town or county or from any government or governmental authority.

Reviser's Note: Source § 32-262.

§ 15.1-1583. Commissioners not liable.—Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

Reviser's Note: Source § 32-263.

§ 15.1-1584. Bond indebtedness.—The bonds and other obligations of the authority, and such bonds and obligations shall so state on their face, shall not be a debt of any city in which the authority is located or of the Commonwealth, and neither the Commonwealth nor any such city shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the Commonwealth.

Reviser's Note: Source § 32-264.

§ 15.1-1585. Form.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates payable at

such time or times, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution or its trust indenture may provide.

Reviser's Note: Source § 32-265.

§ 15.1-1586. Sale.—The bonds may be sold at public or private sale at such price or prices as the authority shall determine.

Reviser's Note: Source § 32-266.

§ 15.1-1587. Interim certificates.—Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements, relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution or trust indenture determine.

Reviser's Note: Source § 32-267.

§ 15.1-1588. Signature of former officers.—In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

Reviser's Note: Source § 32-268.

§ 15.1-1589. Purchase by authority.—The authority shall have the power out of any funds available therefor to purchase any bonds issued by it; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased only out of any such revenues available therefor. All bonds so purchased shall be canceled. This section shall not apply to the redemption of bonds.

Reviser's Note: Source § 32-269.

§ 15.1-1590. Negotiability.—Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this chapter shall be fully negotiable.

Reviser's Note: Source § 32-270.

§ 15.1-1591. Provisions of bonds and trust indentures.—In connection with the issuance of bonds or the incurring of any obligations and in order to secure the payment of such bonds or obligations, the authority shall have power:

1. To pledge by resolution, trust indenture, or other contract, all or any part of its rents, fees, or revenues.

2. To covenant to impose and maintain such schedule of fees and charges as will produce funds sufficient to pay operating costs and debt service.

3. To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital project or other property of the authority or any part thereof or with respect to limitations on its right to undertake additional hospital projects.

4. To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.

5. To provide for the release of rents, fees, and revenues, from any pledge and to reserve rights and powers in, or the right to dispose of property, the rents, fees and revenues from which are subject to a pledge.

6. To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

7. To covenant as to what other, or additional debt, may be incurred by it.

8. To provide for the terms, form, registration, exchange, execution and authentication of bonds.

9. To provide for the replacement of lost, destroyed, or mutilated bonds.

10. To covenant as to the use of any or all of its property, real or personal.

11. To create or to authorize the creation of special funds in which there shall be segregated: (a) the proceeds of any loan or grant; (b) all of the rents, fees and revenues of any hospital project or projects or parts thereof; (c) any monies held for the payment of the costs of operation and maintenance of any such hospital projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (d) any monies held for the payment of the principal and interest on its bonds or the sums due under its leases or as a reserve for such payments; and (e) any monies held for any other reserve or contingencies; and to covenant as to the use and disposal of the monies held in such funds.

12. To redeem the bonds and to covenant for their redemption and to provide the terms and conditions thereof.

13. To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

14. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.

15. To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance monies.

16. To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any monies necessary for such purpose, and the monies so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, lease or contract of the authority with reference thereto.

17. To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

18. To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.

19. To covenant to surrender possession of all or any part of any hospital project or other property of the authority, the revenues from which have been pledged, upon the happening of any event of default (as defined in the contract) and to vest in an obligee the right without judicial proceeding to take possession and to use, operate, manage and control such hospital project or other property or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the monies collected in accordance with the agreement of the authority with such obligee.

20. To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.

21. To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character.

22. To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government or any purchaser of the bonds of the authority may reasonably require.

23. To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds and in the provisions for their security that are not inconsistent with the Constitution of Virginia.

Reviser's Note: Source § 32-271.

§ 15.1-1592. Further provisions as to trust indenture or bond resolution; security required of depository of proceeds of bonds.—In the discretion of the authority any bonds issued under the provisions of this chapter may be secured by a trust indenture by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within the Commonwealth. Such trust indenture or the resolution authorizing the issuance of such bonds may pledge or assign the fees, rents and other charges to be received or proceeds of or rights under any contract or contracts pledged. Such trust indenture or resolution may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly the appointment of a receiver for any hospital project or other property of the authority from which the revenues have been pledged and such other provisions as have hereinabove been specifically authorized to be included in any trust indenture or resolution of the authority. Any bank or trust company incorporated under the laws of the Commonwealth acting as depository of the proceeds of bonds or of revenues or other monies may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust indenture or resolution may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict individual rights of action by bondholders. In addition to the foregoing, any such trust indenture or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or resolution may be treated as a part of the cost of the operation of a project.

Reviser's Note: Source § 32-271.1.

§ 15.1-1593. Fees, rents and charges for use of project and facilities; sinking fund.—The authority is hereby authorized to fix, revise, charge and collect fees, rents and other charges for the use of any project and the facilities thereof. Such fees, rents and other charges shall be so fixed and adjusted as to provide, together with other revenues determined by the authority to be available, a fund sufficient to pay the cost of maintaining, repairing and operating the project, the principal of and interest on such bonds as the same shall become due and payable and amounts to create and maintain reserves for such purposes and for other purposes of the authority. Such fees, rents and charges shall not be subject to supervision or regulation by any city, town or county government or by any commission, board, bureau or agency of any of the foregoing. The authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture securing the same for setting aside any part or all of the fees, rents and other charges received by it in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, rents and charges so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither such resolution nor trust indenture need be filed or recorded except in the records of the authority. The use and disposition of monies to the credit of such sinking or other similar fund shall be subject to the provisions of such resolution or trust indenture. Except as may otherwise be provided in such resolution or trust indenture, such sinking or other similar fund shall be a fund for all such bonds without distinction or priority of one over another.

Reviser's Note: Source § 32-271.2.

§ 15.1-1594. Monies received deemed trust funds.—All monies received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such monies shall be deposited shall act as trustee of such monies and shall hold and apply the same for the purposes hereof, subject to the provisions of this chapter and the resolution authorizing the issuance of such bonds or the trust indenture securing the same.

Reviser's Note: Source § 32-271.3.

§ 15.1-1595. Protection and enforcement of rights and duties under chapter.—Any holder of bonds issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under any trust indenture securing the same, except to the extent the rights herein given may be restricted by such trust indenture or any resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of this Commonwealth or granted by this chapter or under such trust indenture or resolution and may enforce and compel the performance of all duties required by this chapter or by such trust indenture or resolution to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging and collection of fees, rents and other charges.

Reviser's Note: Source § 32-271.4.

§ 15.1-1596. Exemption from taxation.—The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of any hospital project which the authority is authorized to undertake will constitute the performance of an essential governmental function, the authority shall not be required to pay any taxes or assessments upon any hospital project acquired or constructed by it; and the bonds issued under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and any political subdivision thereof.

Reviser's Note: Source § 32-271.5.

§ 15.1-1597. Bonds legal investments; deposit with public agencies.—Bonds issued by the authority under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and all its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

Reviser's Note: Source § 32-271.6.

§ 15.1-1598. Chapter supplemental; application of other laws; consent of local governing bodies or other agencies not required.—The foregoing sections of this chapter shall be deemed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided the issuance of revenue bonds and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds. Except as otherwise expressly provided in this chapter, none of the powers granted to the authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of any city, town or county government or any commission, board, bureau or agency of any of the foregoing.

Reviser's Note: Source § 32-271.7.

§ 15.1-1599. Severability; liberal construction.—The provisions of this chapter are severable, and if any of its provisions shall be declared unconstitutional or invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof.

Reviser's Note: Source § 32-271.8.

Article 4.

Dissolution.

§ 15.1-1600. Proceedings for dissolution.—Whenever it shall appear to the commissioners of an authority that the need, as provided in § 15.1-1538, for such authority in the city in which it was created no longer exists, then upon petition by the commissioners to the circuit court of such city, after giving to the city ten days' notice, and upon the production of satisfactory evidence in support of such petition, the court may, in its discretion, enter an order declaring that the need for such authority in the city no longer exists and approving a plan for the winding up of the business of the authority, the payment or assumption of its obligations, and the transfer of its assets.

Reviser's Note: Source § 32-275.1.

§ 15.1-1601. When powers and duties cease to exist.—If the court shall enter an order, as provided in § 15.1-1600, that the need for such authority no longer exists, then, except for the winding up of its affairs in accordance with the plan approved by the court, its authorities, powers and duties to transact business or to function shall cease to exist as of that date set forth in the order of the court.

Reviser's Note: Source § 32-275.2.

§ 15.1-1602. Appeal.—An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to either the authority or the city from the judgment of the court and the appeal shall be heard and determined without reference to the principles of demurrer to evidence. The trial court shall certify the facts in the case to the Supreme Court and the evidence shall be considered as on appeal in proceedings under Chapter 1.1 (§ 25-46.1 et seq.) of Title 25 of the Code of Virginia. In any case, by consent of both parties of record, the petition may be dismissed at any time before final judgment on appeal.

Reviser's Note: Source § 32-275.3.

2. That §§ 32-130 through 32-135 of the Code of Virginia and Chapters 13 and 14 of Title 32 of the Code of Virginia containing §§ 32-212 through 32-290.3 are repealed.

3. That this act shall be in force and effect on and after October one, nineteen seventy-nine.

Reviser's Note: New section. Although Title 63.1 (Welfare) includes, in its penalties section, language making recipient fraud a crime, it was considered necessary to draft a statute specifically concerning Medicaid Recipient Fraud. The Health Department's experience with Commonwealth's Attorneys revealed reluctance on their part to prosecute Medicaid recipients under the provisions of Title 63.1.

A BILL to amend the Code of Virginia by adding a section numbered 18.2-186.1, constituting certain acts related to medical assistance as larceny.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-186.1 as follows:

§ 18.2-186.1. False statements, representations, impersonation or fraudulent devices to obtain medical assistance; failure to notify of change in conditions.—A. Any person who, by means of a wilfully false statement or representation or by impersonation or other fraudulent device, (i) obtains or attempts to obtain medical assistance to which he is not entitled or (ii) obtains or attempts to obtain on behalf of another person, or aids or abets another person in obtaining, medical assistance to which such other person is not entitled shall be guilty of larceny.

B. Any person who knowingly fails to notify the State Department of Health of a change in condition which would result in reduction or termination of medical assistance which such person is receiving shall be guilty of larceny.

C. As used in this section, "medical assistance" means medical assistance provided for in Title XIX of the United States Social Security Act and administered under § 32.1-74.

D. It shall be the duty of the State Health Commissioner or his designee to initiate proceedings to enforce the provisions of this section for each violation of which he has knowledge.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: Sections 18.2-267 and 18.2-268 refer to procedures and equipment used for analysis of tests to determine alcoholic content of blood. Presently, the approval of the procedures and equipment rests with the State Board of Health, but once the decisions are made, the Board delegates this administrative responsibility to the Division of Consolidated Laboratory Services. Changes are proposed in the statute to reflect the transfer of the Division of Consolidated Laboratory Services from the Department of Health to the new Department of General Services, and to give the Division authority for these determinations.

A BILL to amend and reenact §§ 18.2-267 and 18.2-268 of the Code of Virginia, relating to tests to determine alcohol content of blood.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-267 and 18.2-268 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-267. Analysis of breath to determine alcoholic content of blood.—(a) Any person who is suspected of a violation of § 18.2-266 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the ~~State~~ *Commonwealth* , or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The ~~State Board of Health~~ *Division of Consolidated Laboratory Services* shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

(c) Any person who has been stopped by a police officer of the ~~State~~ *Commonwealth* , or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of § 18.2-266, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.2-266, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of § 18.2-268.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of § 18.2-266, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of § 18.2-268, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under § 18.2-266, the purpose of this section being to permit a preliminary analysis of the alcoholic

content of the blood of a person suspected of having violated the provisions of § 18.2-266.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.2-266, advise such person of his rights under the provisions of this section.

§ 18.2-268. Use of chemical test to determine alcoholic content of blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions.—(a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

( ) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this ~~State~~ *Commonwealth* on and after January one, nineteen hundred seventy-three, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for violation of § 18.2-266 or of a similar ordinance of any county, city or town within two hours of the alleged offense. Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that either test is not available.

(c) If a person after being arrested for a violation of § 18.2-266 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this ~~State~~ *Commonwealth* shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so ~~constitute~~ *constitutes* grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this ~~State~~ *Commonwealth* , then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been *further* advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Division of Consolidated Laboratory Services (hereinafter referred to as Division), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood or breath sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Division which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Division, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Division. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of the second container give to the accused a form provided by the Division which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the Division; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time

directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver the second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Division, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Division.

(d3) A fee not to exceed fifteen dollars shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two hours after receiving the container than the officer shall destroy such container.

(e) Upon receipt of the blood sample forwarded to the Division for analysis, the Division shall cause it to be examined for alcoholic content and the Director of the Division or his designated representative shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Division and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the Division.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the Division, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate is provided for in this section shall, when duly attested by the Director of the Division or his designated representative, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 or of a similar ordinance of any county, city or town, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(i) In any trial for a violation of § 18.2-266 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the

accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for a chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal, declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of the warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of ninety days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense; provided, that if the defendant shall plead guilty to a violation of § 18.2-266, or of a similar ordinance of a county, city or town, the court may dismiss the warrant.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party, trial by jury shall be as provided in article 4 of chapter 15 (§ 19.2-260 et seq.) of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

(q) No person arrested for a violation of § 18.2-266 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(r1) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a

type of equipment and in accordance with the methods approved by the ~~State Health Commissioner~~ *Division* . Such breath-testing equipment shall be tested for its accuracy by the ~~State Health Commissioner's office~~ *Division* at least once every six months.

The ~~State Health Commissioner~~ *Division* is directed to establish a training program for all individuals who are to administer the breath tests, of at least forty hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon the successful completion of the training program the ~~Commissioner~~ *Division* may issue a license to the individual operator indicating that he has completed the course and is authorized to conduct a breath-test analysis.

Any individual conducting a breath test under the provisions of this section and as authorized by the ~~State Health Commissioner~~ *Division* shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal proceeding as evidence of the alcoholic content of the blood of the accused. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof. A copy of such certificate shall be forthwith delivered to the accused.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: Source § 32-70. It is felt that this statute has no significant public health impact and that it is primarily a criminal statute. It is recommended that it be moved from Title 32 to Title 18.2. An increase in the penalty is proposed, from a fine not exceeding $20 for each offense.

A BILL to amend the Code of Virginia by adding a section numbered 18.2-510 and to repeal § 32-70 of the Code of Virginia, the added and repealed sections relating to burial or cremation of dead animals or fowls; penalty for violation.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-510 as follows:

§ 18.2-510. Burial or cremation of animals or fowls which have died.—When the owner of any animal or grown fowl which has died knows of such death, such owner shall forthwith have its body cremated or buried, and, if he fails to do so, any judge of a general district court , after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal so cremated or buried a fee of five dollars, and of the owner of every such fowl so cremated or buried a fee of one dollar, to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

This section shall not apply to any county until the governing body thereof shall adopt the same.

2. That § 32-70 of the Code of Virginia is repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: This provision is an integral part of the statutory scheme of Title 32.1, especially as concerns preventable diseases and toxic substances. It is proposed that this statute be altered to include language permitting the testing or collecting of samples for testing as well as language making it clear that biological organisms are in that category of toxic substances to be detected.

A BILL to amend and reenact §§ 19.2-393, 19.2-394, 19.2-396 and 19.2-397 of the Code of Virginia, relating to inspection warrants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-393, 19.2-394, 19.2-396 and 19.2-397 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-393. Definitions.—An "inspection warrant" is an order in writing, made in the name of the Commonwealth, signed by any judge of ~~any~~ *the* circuit court whose territorial jurisdiction encompasses the property or premises to be inspected *or entered* , and directed to a State or local official, commanding him to *enter and to* conduct any inspection *, testing or collection of samples for testing* required or authorized by State or local law or regulation in connection with the manufacturing ~~or~~ , emitting *or presence* of a toxic substance, and which describes, either directly or by reference to any accompanying or attached supporting affidavit, the property or premises where the inspection *, testing or collection of samples for testing* is to occur. Such warrant shall be sufficiently accurate in description so that the official executing the warrant and the owner or custodian of the property or premises can reasonably determine from the warrant the activity, condition, circumstance, object or property of which inspection *, testing or collection of samples for testing* is authorized.

For the purposes of this chapter, "manufacturing" means producing, formulating, packaging, or diluting any substance for commercial sale or resale; "emitting" means the release of any substance, whether or not intentional or avoidable, into the work environment, into the air, into the water, or otherwise into the human environment; and "toxic substance" means any substance *, including (i) any raw material, intermediate product, catalyst, final product and by-product of any operation conducted in a commercial establishment and (ii) any biological organism,* that has the capacity, through its physical, chemical, or biological properties, to pose a substantial risk *to humans, aquatic organisms or any other animal* of *illness,* death or impairment *of normal functions,* either immediately or over *a period of* time ~~, to the normal functions of humans, aquatic organisms, or any other animal, including any raw materials, intermediate products, catalysts, final products, or by-products of any operation conducted in a commercial establishment~~ .

§ 19.2-394. Issuance of warrant.—An inspection warrant may be issued for any inspection *, testing or collection of samples for testing* or *for any* administrative search authorized by State or local law or regulation in connection with the *presence,* manufacturing or emitting of toxic substances, whether or not such warrant be constitutionally required. Nothing in this chapter shall be construed to require issuance of an inspection warrant where a warrant is not constitutionally required or to exclude any other lawful means of search ~~or~~ , inspection *, testing or collection of samples for testing* , whether without warrant or pursuant to a search warrant issued under any other provision of the Code of Virginia. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected *or tested* and the purpose for which the inspection *, testing or collection of samples for testing* is to be made. Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection *, testing or collection of samples for testing* are satisfied with respect to the particular place, things or persons or there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such

inspection , *testing or collection of samples for testing* . The supporting affidavit shall contain either a statement that consent to inspect , *test or collect of samples for testing* has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to ~~effectively~~ enforce *effectively* the State or local law or regulation which authorizes such inspection , *testing or collection of samples for testing* . The issuing ~~judicial officer~~ *judge* may examine the affiant under oath or affirmation to verify the accuracy of any matter indicated by the statement in the affidavit.

§ 19.2-396. Conduct of inspection, testing or collection of samples for testing; special procedure for dwelling.–An inspection , *testing or collection of samples for testing* pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, things or persons unless specifically authorized by the ~~judicial officer~~ *issuing judge* upon a showing that such authority is reasonably necessary to effectuate the purpose of the law or regulation being enforced. An ~~inspection~~ *entry* pursuant to this warrant shall not be made ~~by means of forcible entry~~ *forcibly* , except that the ~~judicial officer~~ *issuing judge* may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of ~~a violation of a particular State or local law or regulation, which, if such violation existed, would be~~ an immediate threat to *public* health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. In the case of ~~the inspection of~~ *entry into* a dwelling, prior consent must be sought and refused and notice that a warrant has been issued must be given at least twenty-four hours before the warrant is executed, unless the issuing ~~judicial officer~~ *judge* finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to *public* health or safety.

§ 19.2-397. Refusal to permit authorized inspection; penalty.–Any person who willfully refuses to permit an inspection , *testing or collection of samples for testing* lawfully authorized by warrant issued pursuant to this chapter shall be guilty ~~, upon conviction,~~ of a Class 3 misdemeanor.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: This section is in the chapter providing for premarital blood tests. The proposed changes reflect the transfer of the Division of Consolidated Laboratory Services from the Department of Health to the Department of General Services.

A BILL to amend and reenact § 20-6 of the Code of Virginia, relating to premarital tests for syphilis.

Be it enacted by the General Assembly of Virginia:

1. That § 20-6 of the Code of Virginia is amended and reenacted as follows:

§ 20-6. By whom tests made; nature and charge.–Serological tests required by this chapter shall be made by the ~~State Department of Health~~ *Division of Consolidated Laboratory Services* or by a laboratory approved for such purpose by the State Health Commissioner. Such tests used shall be such as are approved by the State Health Commissioner and no charge shall be made for any such tests made by the ~~State Department of Health~~ *Division of Consolidated Laboratory Services* .

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: The provision for requiring immediate vaccination in the event of an epidemic of smallpox is proposed to be deleted inasmuch as this situation is covered in Chapter 2 (Disease Prevention and Control) of proposed Title 32.1. New language is proposed to give the Department of Health the information necessary to contact families with children who have not been immunized in accordance with provisions of this law.

A BILL to amend and reenact § 22-220.1 of the Code of Virginia, relating to preschool physical examinations.

Be it enacted by the General Assembly of Virginia:

1. That § 22-220.1 of the Code of Virginia is amended and reenacted as follows:

§ 22-220.1. Preschool physical examinations.–Before any child is admitted for the first time to any public kindergarten or to any public elementary school such child must have a comprehensive physical examination of a scope to be prescribed by the State ~~Department of~~ Health *Commissioner* , by a qualified licensed physician, who shall make a report of such examination and at the end of such report shall summarize the abnormal physical findings, if any, and shall specifically state what, if any, conditions are found that would identify the child as handicapped. A copy of such report must be presented to the school on the child's behalf. Such report must indicate that the child has received such physical examination no earlier than twelve months prior to the date such child first enters a public kindergarten or public elementary school.

Such physical examination report shall be placed in the child's health record folder at the school, and shall be made available for review by any employee or official of the State Department of Health or any local health department at the request of such employee or official.

Such physical examination shall not be required of any child whose parent or guardian shall object on religious grounds and who shows no visual evidence of sickness, provided that such parent or guardian shall state in writing that, to the best of his knowledge, such child is in good health and free from any communicable or contagious disease.

The health departments of all of the counties and cities of the Commonwealth shall conduct such physical examination for medically indigent children, before their admission to any kindergarten or elementary school or its equivalent, public or private, without charge to such child or his parents or guardians upon request, and may provide such examinations to others on such uniform basis as such departments may establish.

The division superintendent of schools may admit for so long as required any child who has failed to have such physical examination if such failure occurs as a result of a reasonable delay in the conduct of such physical examination.

Every pupil shall, within ten days after entering a public or private school, furnish a certificate from a licensed physician certifying that such pupil has been successfully immunized against communicable diseases as required by § ~~32-57.1~~ *32.1-46* of this Code. ~~Nothing in this section shall preclude the Department of Health from requiring immediate vaccination in case of an epidemic of smallpox in which said case the Department of Health is specifically authorized and empowered to require such immediate vaccination.~~ *By October one of each year each division superintendent and each principal of a private school shall submit to the local health director of the county or city where the school division or school is located the name of each child for whom no certificate of successful immunization has been furnished or whose certificate indicates that the required immunizations were not completed and the name and address of the parents of such child.*

The provisions of this section shall not apply to any child who is admitted to a public school prior to July one, nineteen hundred seventy-two.

2. That the act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: A restructuring of the chapter is proposed so as to conform to the format for other Health Department and environmental protection statutes. Many of the changes are housekeeping in nature. A new definitions section is proposed. The power to adopt regulations is brought together in one section, as are the enforcement provisions.

Three major substantive changes are proposed: That the power to condemn polluted growing areas for the taking of shellfish be extended to "crustacea" and "finfish". Also, that the ability to seek injunctions and civil penalties be added to criminal sanctions as a method of enforcement. Also proposed is coverage of any "other form of marine life" in importing and right of entry provisions.

A BILL to amend and reenact §§ 28.1-179, 28.1-182, 28.1-183.1 and 28.1-183.2 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 28.1-178.1 through 28.1-178.7, 28.1-183.3 and 28.1-183.4; and to repeal §§ 28.1-175 through 28.1-178, 28.1-180, 28.1-181 and 28.1-183 of the Code of Virginia, the amended, added and repealed sections relating to fish and shellfish unfit for market and condemnation of polluted growing areas.

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.1-179, 28.1-182, 28.1-183.1 and 28.1-183.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 28.1-178.1 through 28.1-178.7, 28.1-183.3 and 28.1-183.4 as follows:

§ 28.1-178.1. Definitions.—As used in this chapter:

A. "Board" means the State Board of Health.

B. "Crustacea" means all edible species of crab, lobster and shrimp, either shelled or in the shell, fresh, cooked or frozen.

C. "Finfish" means any cold blooded, strictly aquatic, water breathing craniate vertebrate with fins, including cyclostomes, elasmobranchs and higher gilled aquatic vertebrates with cartilaginous or bony skeletons.

D. "Inspector" means an inspector appointed by the Commissioner of Marine Resources pursuant to Chapter 3 of this title or an inspector appointed by the Board.

E. "Packing house" means any establishment or place where shellfish or crustacea are processed, stored or prepared for market.

F. "Relay" means to move commercial-size shellfish for the purpose of natural purification from water which is not approved to water which is approved or conditionally approved by the State Health Commissioner pursuant to § 28.1-178.6. The term does not include the replanting of subcommercial-size or seed-stock shellfish.

G. "Shellfish" means all edible species of oyster, clam, mussel, scallop and conch, either shucked or in the shell, fresh, cooked or frozen.

H. "Toxic substance" has the meaning set forth in § 32.1-239

§ 28.1-178.2. Assignment of responsibilities.—The regulation of the growing waters, harvesting, processing and storing of finfish, shellfish and crustacea as these pertain to human health shall be the responsibility of the State Board of Health primarilly and, under such circumstances as may be defined by law, the joint responsibility of the Board and the Marine Resources Commission.

Reviser's Note: Source § 28.1-180.

§ 28.1-178.3. Regulations—A. The Board may by regulation:

1. Establish standards of quality for water from which finfish, shellfish and crustacea may be taken for human consumption.

2. Establish minimum sanitation standards for boats, vessels, barges, motor vehicles, other conveyances and wharves used in the harvesting and conveyance of shellfish and crustacea for human consumption and for packing houses and other places where shellfish or crustacea are processed, stored or prepared for market.

3. Establish standards of quality for finfish, shellfish and crustacea for human consumption.

4. Establish procedures for the issuance of orders and certificates and for appeals.

5. Establish procedures for the seizure and disposition of contaminated or potentially

contaminated finfish, shellfish or crustacea.

6. Prohibit the marketing or sale of finfish, shellfish or crustacea which are unfit for human consumption.

B. The Board or the Commission may adopt regulations governing the removal and transportation of shellfish from condemned areas and the relaying of such shellfish.

§ 28.1-178.4. General powers of State Health Commissioner.—The State Health Commissioner is hereby authorized:

1. To examine, inspect, take samples of, and analyze or have analyzed any species of finfish, shellfish or crustacea, seawater or bottom sediment located at any place in this Commonwealth.

2. To make surveys of the sanitary conditions and pollution hazards in and adjacent to finfish, shellfish and crustacea growing areas, both in the water and on shore.

3. To provide technical advice and assistance to the finfish, shellfish and crustacea industries in this Commonwealth concerning the taking, processing, storing, marketing and preservation of their products in such manner as will protect the public health.

Reviser's Note: Source § 28.1-175.

§ 28.1-178.5. Certificates.—A. No person shall process, store or prepare for market any shellfish or crustacea without first obtaining a certificate from the State Health Commissioner.

Upon application for a certificate, the State Health Commissioner or his designee shall inspect the premises where shellfish or crustacea are to be processed, stored or prepared for market. If such premises comply with regulations of the Board, the State Health Commissioner shall issue a certificate.

B. The State Health Commissioner may revoke any certificate issued pursuant to this section if he determines by investigation that the holder of the certificate is not in compliance with the provisions of this chapter, the regulations of the Board, or any order issued by the State Health Commissioner pursuant to this chapter.

§ 28.1-178.6. Approval and condemnation of waters.—A. The State Health Commissioner may approve or conditionally approve waters for the taking of finfish, shellfish and crustacea on the basis of surveys authorized in paragraph 2. of § 28.1-178.4 or, if the State Health Commissioner finds that an area of water does not meet any standards set by the Board or that the finfish, shellfish or crustacea in such water are not fit for human consumption, the State Health Commissioner may condemn such area (i) permanently, (ii)until the quality of water in the area meets the minimum standards set by the Board or contamination hazards to such water are eliminated or (iii) for the season in which recreation or other activities in or adjacent to the area cause pollution of the area.

B. When the State Health Commissioner condemns an area of water, he shall cause limits or boundaries of such area to be fixed and marked. In waters under the Commission's jurisdiction, the Commission, at the direction of the State Health Commissioner, shall erect markers or signs designating such condemned area. Such markers or signs shall be supplied to the Commission by the State Health Commissioner.

C. No person shall take, catch, transport, sell, offer for sale, remove, receive, keep or store finfish, shellfish or crustacea from a condemned area except as provided in § 28.1-179.

Reviser's Note: Source § 28.1-177.

§ 28.1-178.7. Orders.—A. If the State Health Commissioner finds, on the basis of an inspection, examination and analysis, that any finfish, shellfish or crustacea are not fit for human consumption, he may issue an order to any person prohibiting such person from harvesting, processing, storing or preparing for market or selling such finfish, shellfish or crustacea.

B. If the State Health Commissioner finds that any boat, vessel, barge, motor vehicle, other conveyance or wharf used in the harvesting or conveyance of shellfish or crustacea for human consumption or any packing house or other place where shellfish or crustacea are processed, stored or prepared for market is in violation of any standards set by the Board pursuant to this chapter, he may issue an order prohibiting the owner or operator thereof from continuing to use or operate such boat, vessel, barge, motor vehicle, other conveyance or wharf for the harvesting and conveyance of crustacea or shellfish or from continuing to use or operate such packing house or other place.

§ 28.1-179. Removal, transportation, etc., from polluted ground. (1) No person ~~, firm or corporation~~ shall take, catch, transport, sell, offer for sale, remove, receive, keep or store *finfish,* shellfish *or crustacea* from ~~condemned~~ areas ~~,~~ *condemned by the State Health Commissioner as provided in § 28.1-178.6* or relay shellfish taken from such areas ~~,~~ until a special permit has been obtained from the Commission ~~, which must~~ . *The permit shall* be carried in ~~his~~ *such person's* possession when engaged in such operation.

Before any person ~~, firm or corporation~~ shall take or remove shellfish from private grounds in *such* condemned areas he shall have written authority in his possession from the owner or lessee in addition to obtaining the permit as herein required.

No permit for transporting or relaying shall be issued to any person ~~, firm or corporation~~ for the purpose of buying and selling shellfish from *such* condemned areas. Permits for transporting and relaying shall only be issued to persons ~~, firms or corporations~~ who catch shellfish from *such* condemned areas and who ~~want~~ *intend* to move such shellfish to an ~~approved~~ area *approved by the State Health Commissioner as provided in § 28.1-178.6* ; and to those persons who buy shellfish from condemned areas from the catcher and who transport or relay the shellfish to ~~their or other~~ approved grounds.

No permits shall be issued to any motor vehicle transporting and ~~/or~~ relaying shellfish from condemned areas unless such motor vehicle has an enclosed body with doors which can be sealed by an inspector. ~~An~~ *The* inspector shall have the authority to refuse to issue such a permit if he determines the motor vehicle cannot be properly sealed.

If shellfish from condemned areas ~~is~~ *are* to be transported and ~~/or~~ relayed ~~,~~ at any time ~~,~~ by a motor vehicle , an inspector shall seal the body of the motor vehicle before departure and the seal shall not be broken by anyone except an inspector at the point of final destination where the cargo is to be discharged for relaying and ~~/or~~ transplanting in an approved area. After the seal is broken an inspector shall supervise the relaying of the shellfish from the truck to the approved area.

Upon evidence of such permit holder offering for sale and not planting such shellfish from condemned areas, ~~the Commissioner shall promptly revoke~~ all permits held by such person ~~, firm or corporation~~ *issued pursuant to the provisions of this title may be revoked* .

(2) Any person ~~, firm or corporation~~ holding a valid permit to remove, transport ~~and/~~ or relay shellfish from condemned areas shall keep accurate records and submit monthly reports to the Commission, which shall designate the areas from which the shellfish were removed; the areas to which the shellfish were relayed; the dates of the removal ~~,and/~~ or relaying; the number of bushels of shellfish removed ~~, and/~~ or relayed; the name of the permit holder; the name and address of each person employed and engaged in the operation; the names or numbers of the boats; and the license numbers of the trucks used in the operation. During any month ~~,~~ covered by permit ~~,~~ in which no removal ~~and/~~ or relaying is in operation, a report shall be submitted to the Commission ~~,~~ indicating that no shellfish were removed ~~and/~~ or relayed. It shall be the responsibility of the permit holder to keep accurate records and make reports of the removal ~~,and/~~ or relaying ~~,~~ to the main office of the Commission on or before the tenth day of the month following the month of operation. The permit shall set out the expiration date thereof.

(3) Application for the special permit, provided for in subsection (1) of this section, before the removal, transportation ~~and~~ ~~/~~ or relaying of shellfish from condemned areas, shall be made on forms provided by the Commission. A fee of one dollar shall be paid to the Commission when such application for permit is filed. This permit shall not be transferable.

The special permit, after being issued, may be revoked at any time by the Commissioner ~~,~~ *of*

Marine Resources ~~when, in his judgment, it will be to the best interest of the industry that the same be revoked~~ *if he finds that any provisions of this chapter or any regulations issued pursuant to the provisions of this chapter have been violated* . Any person having said permit revoked may demand a hearing before the Commission at ~~the~~ *its* next scheduled meeting ~~of the Commission~~ .

(4) Shellfish removal ~~,and/~~ or relaying ~~,~~ from condemned areas shall be under the supervision of the Marine Resources Commission and the Department of Health.

(a) The season for the removal ~~,and/~~ or relaying ~~,~~ of shellfish from private grounds shall be from April first to November first.

(b) The season for the removal ~~,and/~~ or relaying of shellfish from public grounds shall be from May first to August fifteenth.

(c) The above dates for the opening and closing of said seasons may be changed by the Commission, and the Commission may refuse to grant permits for removal of shellfish from any and all condemned areas of the waters of the ~~State~~ *Commonwealth* .

(5) Any conveyance engaged in transporting shellfish, which have been caught within condemned areas for the purpose of relaying, to another area where they may be cleansed and made fit for market, shall display a yellow flag of not less than thirty inches in length and eighteen inches in width before any shellfish are placed thereon, and the flag shall be displayed during the entire relaying operation.

(6) It shall be the duty of the inspector of the Marine Resources Commission ~~,~~ and employees of the Department of Health ~~,~~ to examine the area to which shellfish from condemned areas are relayed and see that adequate and proper corner stakes or buoys have been put in place by the lessee before a permit shall be issued to transport to or plant the area. Each corner stake or buoy shall be marked by a yellow flag or bunting of not less than fifteen inches by fifteen inches, and the marking shall remain until a special permit to remove the shellfish for sale or shipment has been obtained from the State Health Commissioner.

(7) No person ~~,~~ ~~firm or corporation~~ shall discharge, or cause to be discharged, any part or all of the shellfish from any conveyance engaged in transporting shellfish from condemned areas at any place other than to approved areas for cleansing, and shall move directly to the approved planting ground, or to conveyances holding a proper permit for relaying to cleansing areas designated in the permit.

(8) The loading and unloading, ashore, of shellfish taken from condemned areas shall only be at points designated by the Commission.

(9) Should the occasion arise for any emergency unloading of any conveyance engaged in transporting shellfish from a condemned area, the Commission shall be notified immediately and disposition of said cargo shall be made under the supervision of the said Commission.

(10) There shall be no transportation, relaying or any movement of shellfish from condemned areas after sunset or before sunrise except by motor vehicle properly sealed pursuant to subsection (1) hereof. Clean shellfish and shellfish from condemned areas shall not be mixed in any quantity in the same cargo.

(11) The Marine Resources Commission, whenever ~~they deem~~ *it deems* an emergency exists, may make rules and regulations to protect the health of the public, which relate to shellfish from condemned areas, without complying with the requirements of §§ 28.1-24 and 28.1-25. Such rules and regulations shall become effective upon the passage by the Commission. These rules and regulations shall be enforced by revoking any and all permits which may have been issued.

§ 28.1-182. Certification of shellfish from out of State.–All ~~oysters and clams~~ *shellfish* in the shell *which are* imported, brought, or transported into this ~~State~~ *Commonwealth* for processing or consumption ~~within this State must have~~ *shall be accompanied by* a certificate from the appropriate agency of the state of origin that ~~said oysters and clams~~ *such shellfish* came from clean, approved areas of water of that state. Any such ~~oysters or clams~~ *shellfish* imported, brought or transported into this ~~State~~ *Commonwealth* which are not accompanied by such certificate are deemed to have

come from polluted waters and shall not be sold or processed for consumption within this ~~State but must be replanted~~ *Commonwealth unless relayed for purposes of purification* in compliance with the provisions ~~and requirements~~ of § 28.1-179 *and such regulations as the Commission or Board may promulgate* .

§ 28.1-183.1. Common carriers.–Common carriers transporting ~~seafoods designated in this chapter must~~ *finfish, shellfish or crustacea shall* carry a bill of lading listing the seafood cargo, the shipper and the consignee. In the event such cargo is found to be in violation of any of the provisions of this chapter, it ~~shall be taken possession of as provided in § 28.1-183,~~ *may be seized by the State Health Commissioner or his designee and disposed of appropriately.* The shipper shall be held liable ~~and the common carrier shall be relieved of~~ *for* the ~~violations and~~ penalties set forth in this chapter.

§ 28.1-183.2. Importing finfish, shellfish, crustacea or other marine life for introduction into waters of State.–It shall be unlawful for any person ~~, firm or corporation~~ to import any ~~fish or~~ *finfish,* shellfish *, crustacea or other form of marine life* into the Commonwealth with the intent of placing such ~~fish or~~ *finfish,* shellfish *, crustacea or other form of marine life* into the waters of the Commonwealth unless one of the following conditions exists:

(a) The ~~fish or~~ *finfish,* shellfish *, crustacea or other form of marine life* is coming from within the continental United States from a state or waters which ~~is~~ *are* at that time on the Commission's list of approved states and waters, and is a species which is at that time on the Commission's list of approved species; or (b) The person ~~, firm or corporation~~ has notified the Commissioner *of Marine Resources* of such intent and has received written permission from ~~the~~ *such* Commissioner.

The list of approved states and waters shall be published by the Commissioner *of Marine Resources* , and a state or water shall be placed on or removed from such list only with the concurrence of the *State Health Commissioner and the* Director of the Virginia Institute of Marine Science. The Commissioner, with the concurrence of *the State Health Commissioner and* the Director of the Virginia Institute of Marine Science, is authorized to change such list when he deems it necessary for the protection of the waters of the Commonwealth.

The list of approved species shall be published by the Commissioner *of Marine Resources* , and a species shall be placed on or removed from such list only with the concurrence of the Director of the Virginia Institute of Marine Science. The Commissioner, with the concurrence of the Director of the Virginia Institute of Marine Science, is authorized to change such list when he deems it necessary for the protection of the waters of the Commonwealth.

The notification of intent to import shall be in writing and submitted to the Commissioner *of Marine Resources* at least thirty days prior to the date of importation, and shall contain information as to the specific ~~fish or~~ *finfish* , shellfish *, crustacea or other form of marine life* to be imported, from what waters the ~~fish or~~ *finfish,* shellfish *, crustacea or other form of marine life* is being taken, the period of time over which importation is to be accomplished, the quantities involved, and into what waters the ~~fish or~~ *finfish,* shellfish *, crustacea or other form of marine life* is to be placed. *Upon receipt of such notification, the Commissioner shall forthwith send a copy thereof to the State Health Commissioner.*

~~Violation of this section shall constitute a misdemeanor.~~

Reviser's Note: The State Health Commissioner is added to the approval process.

§ 28.1-183.3. Right of entry, etc.–The State Health Commissioner or the Commissioner of Marine Resources shall have the right, upon the presentation of appropriate credentials, to inspect, take samples of, test and seize any finfish, shellfish, crustacea or other form of marine life in this Commonwealth, whether in the water or in or upon any boat, vessel, barge, motor vehicle or other conveyance, wharf, processing establishment, storage facility, store, stall or other place where such finfish, shellfish, crustacea or other form of marine life may be found. If the State Health Commissioner or the Commissioner of Marine Resources is denied entry, the judge of an appropriate circuit court may issue an inspection warrant as provided in Chapter 24 of Title 19.2.

Reviser's Note: Source § 28.1-183.

§ 28.1-183.4. Penalties.—A. Any person who violates any provision of this chapter or any regulation or order issued pursuant to this chapter shall be guilty of a Class 1 misdemeanor. Any boat, vessel, motor vehicle or equipment used in committing a violation of this chapter shall be subject to forfeiture as provided in Chapter 10 of of Title 29 of this Code. It shall be the duty of the attorney for the Commonwealth to cause such proceedings to be commenced and prosecuted without delay.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order issued pursuant to this chapter or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the the State Health Commissioner or the Commissioner of Marine Resources to obey such regulation, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

C. Without limiting the remedies which may be obtained in subsection B., any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B. shall be subject, in the discretion of the court, to a civil penalty not to exceed ten thousand dollars for each violation. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order issued pursuant to this chapter or any provision of this chapter, the Board or Commission may provide, in an order issued by the Board or Commission against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limit specified in subsection C. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection C.

Reviser's Note: Sources §§ 28.1-180 and 28.1-181.

2. That §§ 28.1-175 through 28.1-178, 28.1-180, 28.1-181 and 28.1-183 of the Code of Virginia are repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: The last paragraph is new. The Board of Health has traditionally regulated in the areas of hospitals, nursing homes, migrant labor camps, shellfish packing houses, waterworks and sewage treatment plants. This regulation has included the design and construction of these facilities. Since the advent of the Uniform Statewide Building Code, however, questions have arisen as to whether or not that Code preempts the Board of Health's authority in these areas. This proposed amendment reaffirms the Board's authority.

A BILL to amend and reenact § 36-99 of the Code of Virginia, relating to provisions of the Uniform Statewide Building Code.

Be it enacted by the General Assembly of Virginia:

1. That § 36-99 of the Code of Virginia is amended and reenacted as follows:

§ 36-99. Provisions of Code.—The Building Code shall prescribe standards to be complied with in the construction of buildings and structures, and procedures for the administration and enforcement of such standards. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this State, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy and water conservation and barrier-free provisions for the physically handicapped and aged. Such standards shall be reasonable and appropriate to the objectives of this chapter.

In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association.

Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

Code provisions shall incorporate applicable occupational health regulations provided for in Title 40.1 of the Code of Virginia. Code provisions for the construction of hospitals, nursing homes, migrant labor camps, shellfish and crustacea packing houses, waterworks, water supplies, waste water treatment plants, sewage treatment plants, cross-connection control programs which are included as a part of a scheme of protection for public water supply systems, restaurants, hotels, motels and camps shall incorporate the regulations of the State Board of Health and the joint regulations of the State Board of Health and the State Water Control Board where such regulations apply to such construction. The provisions of the Administrative Process Act shall not be applicable to the incorporation of regulations pursuant to the provisions of this section.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: These chapters are proposed to be transferred without substantive change to Title 38.1 because they are essentially concerned with matters of insurance rather than with matters of public health protection.

A BILL to amend the Code of Virginia by adding in Title 38.1 chapters numbered 22, 23 and 24 containing sections numbered 38.1-810 through 38.1-862 and to repeal Chapters 11, 11.1 and 11.2 of Title 32 of the Code of Virginia containing §§ 32-168 through 32-195.50, the added and repealed sections relating to contracts and plans for future hospitalization, medical and surgical services, dental service corporations and optometric service corporations.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 38.1 chapters numbered 22, 23 and 24 containing sections numbered 38.1-810 through 38.1-862 as follows:

Chapter 22.

Contracts and Plans for Future Hospitalization,

Medical and Surgical Services.

§ 38.1-810. Hospital plans.—A hospital or a group of hospitals may conduct directly or through an agent, who may be either an individual or a nonstock corporation, a plan or plans for furnishing prepaid hospital and similar or related services.

Reviser's Note: Source § 32-195.1.

§ 38.1-811. Medical and surgical plans.—A group of physicians may conduct directly or through an agent, who may be either an individual or a nonstock corporation, a plan or plans for furnishing prepaid medical or surgical and similar or related services or both.

Reviser's Note: Source § 32-195.2.

§ 38.1-812. Combination plans. A plan for furnishing hospital services may be combined with a plan for furnishing medical or surgical services or both.

Reviser's Note: Source § 32-195.3.

§ 38.1-813. Any person, group of persons or nonstock corporation may conduct plan.—Any person, any group of persons or any nonstock corporation may conduct directly or through an agent, who may be either an individual or a nonstock corporation, a plan or plans for furnishing prepaid hospital or medical and surgical or related services, except dentistry exclusively; provided, however, dental services and optometric services may be included in any plan or plans for furnishing prepaid hospital or medical and surgical or related services or any combination thereof.

Reviser's Note: Source § 32-195.3:1.

§ 38.1-814. Liability of participants.—All hospitals, persons, nonstock corporations and physicians participating in a plan shall be jointly and severally liable on all contracts made for the purposes of the plan by them or by their agent for them. Each such contract executed by their agent on their behalf may be signed by the agent alone; and a contract so signed shall be binding on the principals and not on the agent. Actions for breach of such contracts may be brought against the principals by naming the agent as the sole defendant, and a judgment in favor of the plaintiff may be satisfied out of the assets of the plan in the custody of the agent or out of the assets of each and all of the principals. Each participant shall be liable for his own torts and not for the torts of any other participant or of the agent.

Reviser's Note: Source § 32-195.4.

§ 38.1-815. Change of participants.—Any participating hospital, person, nonstock corporation or physician may resign from a plan at any time and will continue liable on each subscription contract while effective, but not later than the end of each such subscriber's current contract year. Hospitals, persons, nonstock corporations and physicians may be admitted to a plan at any time and will then automatically become liable on all its outstanding contracts.

Reviser's Note: Source § 32-195.5.

§ 38.1-816. Board of directors of nonstock corporation operating plan.—Notwithstanding the provisions of § 13.1-220 to the contrary, any nonstock corporation which operates any plan pursuant to the terms of this chapter except § 38.1-811 shall have a board of directors consisting of not more than fifteen members; provided that, when the geographical area to be served by a plan is increased after January one, nineteen hundred seventy-four, by the Commission, the board of directors may consist of not more than twenty members. A majority of the members shall be subscribers to such plan who are not providers of health care services and not employees or officers of any such plan. The tenure of office of no board member, except the chief executive officer, shall be in excess of eight consecutive years; provided, that the tenure of office of board members elected in nineteen hundred seventy-two shall not be in excess of ten consecutive years, and the tenure of office of board members elected in nineteen hundred seventy-three shall not be in excess of nine consecutive years.

As employed herein "provider of health care services" shall include, but not be limited to physicians, pharmacists, nurses, physical therapists, hospital administrators, employees or stockholders, and other persons furnishing health related services.

Reviser's Note: Source § 32-195.5:1.

§ 38.1-817. Board of directors of plan created under § 38.1-811.—Notwithstanding the provisions of § 13.1-220 to the contrary, any plan created pursuant to § 38.1-811 shall have a board of directors consisting of not more than fifteen members; provided that, when the geographical area to be served by a plan is increased after January one, nineteen hundred seventy-four, by the Commission, the board of directors may consist of not more than twenty members. A majority of the members shall be providers of health care services.

Reviser's Note: Source § 32-195.5:2.

§ 38.1-818. Application of certain provisions of law relating to insurance; payments under plan.—Unless otherwise specifically provided, no provision of this title except this chapter and §§ 38.1-29, 38.1-44 to 38.1-57, 38.1-99 to 38.1-104, 38.1-159 to 38.1-165, 38.1-174 to 38.1-178, 38.1-342.1, 38.1-342.2, 38.1-348.6, 38.1-348.7, 38.1-348.8 and 38.1-348.10 shall, insofar as they are not inconsistent with this chapter, apply to the operation of a plan. No payments shall be made by a plan to a person

included in a subscription contract unless it be for breach of contract or unless it be for contractually included costs incurred by such person or for services received by such person and rendered by a nonparticipating hospital or physician.

Reviser's Note: Source § 32-195.8.

§ 38.1-819. Quarterly reports.—In addition to the annual statement required by § 38.1-159, the Commission shall require every plan to file on a quarterly basis such further reports, exhibits or statements as it deems necessary to furnish full information concerning the condition, solvency, experience, transactions or affairs of such plan. The Commission shall prescribe the time within which such additional reports, exhibits or statements shall be filed, and may require verification by such officers of the company as it may designate.

Reviser's Note: Source § 32-195.8:1.

§ 38.1-820. Subscriber to have free choice of medical practitioners available.—Any plan to provide medical and surgical or related services of a panel of medical practitioners under the terms of this chapter shall be so organized and operated as to assure that any subscriber and those covered by his subscription shall have free choice of the medical practitioners available and participating in the plan for medical services.

Reviser's Note: Source § 32-195.8:2.

§ 38.1-821. Subscriber to be advised in writing as to benefits and limitations thereon.—Any person, group of persons or nonstock corporations organized or operating a plan under the terms of this chapter shall, prior to and during the term of the subscription contract, fully, fairly, and currently advise the subscriber in writing as to the benefits available to the subscriber under the contract and all limitations thereon.

Reviser's Note: Source § 32-195.8:3.

§ 38.1-822. Geographical area.—The geographical area to be served by each plan as hereinbefore defined shall be fixed by the Commission and only one hospital plan, one medical plan and one surgical plan shall operate in one area unless the Commission finds that the operation of more than one plan in an area will promote the public welfare. Subscription contracts shall not be sold to persons residing outside the area of the plan unless they are regularly employed within the area. The subscription contract of a subscriber who neither lives nor is employed within the area shall be cancelled by notice given in accordance with the terms of the subscription contract.

Reviser's Note: Source § 32-195.9.

§ 38.1-823. Interplan arrangements.—A plan may enter into contracts with similar plans within or without this Commonwealth for the interchange of services to those included in subscription contracts and may provide in subscription contracts for the substitution of such services in lieu of those therein recited.

Reviser's Note: Source § 32-195.10.

§ 38.1-824. Services of certain practitioners other than physicians to be covered.—No plan for furnishing prepaid medical and surgical, and similar or related services, or any of such services, shall fail or refuse, either directly or indirectly, to allow or to pay for such services, or any part thereof, rendered by any doctor of podiatry, doctor of chiropody, or optometrist, optician and psychologist duly licensed to practice in Virginia, to the holder of any contract or subscription contract issued under or pursuant to such plan if the services rendered (i) are services provided for by such contract or subscription contract and (ii) are services which the doctor of podiatry, doctor of chiropody or optometrist, optician and psychologist is licensed to render in Virginia.

Reviser's Note: Source § 32-195.10:1.

§ 38.1-825. Licensing of plans.—It shall be unlawful to operate a plan without a license issued by the Commission. The agent, or the principals if there be no agent, shall apply for a license and furnish such relevant information as the Commission requires. Each license shall expire at midnight

on the following thirtieth day of June. With each application for a license a filing fee of fifty dollars shall be paid, and if the license is issued, the filing fee shall serve as a license fee for the remaining portion of the license year.

Reviser's Note: Source § 32-195.11.

§ 38.1-826. Renewal of plan license.—Unless a plan notifies the Commission that it does not wish a renewal license, such plan shall be deemed to have applied for a renewal license and shall pay on the first day of July of each year a renewal fee. If the plan has fewer than five thousand and one subscribers, the renewal fee shall be fifty dollars. If the plan has more than five thousand but fewer than ten thousand and one subscribers, the renewal fee shall be one hundred dollars. If the plan has more than ten thousand but fewer than twenty thousand and one subscribers, the renewal fee shall be one hundred and fifty dollars. If the plan has more than twenty thousand subscribers, the renewal fee shall be two hundred dollars.

The number of subscribers shall be counted as of the first day of June.

Reviser's Note: Source § 32-195.12.

§ 38.1-827. Licensing of salesmen.—Subscription contracts may be solicited outside the principal office of a plan only through licensed salesmen. The requirements and procedures governing the issuance of salesmen's licenses and the payment of fees related thereto shall be the same as those for agents as provided in Article 3 of Chapter 7 of this title. No salesman's license shall be issued unless the Commission is satisfied that the applicant is a person of good character and reputation and competent to perform the obligations of a salesman of subscription contracts.

Reviser's Note: Source § 32-195.13.

§ 38.1-828. Corporate agents.—If the agent of a plan is a corporation, the corporation shall not engage in any other business; provided, however, that such corporation may assist in the administration of governmental health care programs in such manner as may be provided for by contract or regulations. Its charter may provide for ex officio directors and directors elected by persons or associations who are not directors or members of the corporation. The license and renewal fees paid by a corporation under this chapter shall be in lieu of all other State and local license fees or license taxes and State income taxes of the corporation.

Reviser's Note: Source § 32-195.15.

§ 38.1-829. Advertising matter.—In the operation of a plan it shall be unlawful to use any misleading advertising matter or subscription applications or contracts, whether written or oral.

Reviser's Note: Source § 32-195.16.

§ 38.1-830. Injunctions.—The Commission shall have the jurisdiction and powers of a court of equity to issue temporary and permanent injunctions restraining violations or attempted violations of this chapter and to enforce such injunctions by fine or imprisonment.

Reviser's Note: Source § 32-195.17.

§ 38.1-831. Penalties.—The Commission may, by judgment entered after a hearing on notice duly served on the defendant not less than ten days before the date of the hearing, if it be proved that the defendant has violated any provision of this chapter or any lawful order of the Commission issued under this chapter, impose a penalty not exceeding one thousand dollars, which shall be collectible by the process of the Commission as provided by law.

In addition to imposing such penalty or without imposing such penalty, the Commission, in any such case, may revoke any license issued by it to the defendant.

Reviser's Note: Source § 32-195.18.

§ 38.1-832. Appeals.—Any person aggrieved by any final or interlocutory judgment, order or decree of the Commission may appeal, as a matter of right, to the Supreme Court of Virginia.

Reviser's Note: Source § 32-195.19.

§ 38.1-833. Controversies involving subscription contracts.—The Commission shall have no jurisdiction to adjudicate controversies growing out of subscription contracts, and a breach of contract shall not be deemed a violation of this chapter.

Reviser's Note: Source § 32-195.20.

§ 38.1-834. Coverage of dependent children.—Any subscription contract delivered or issued for delivery in this Commonwealth more than one hundred twenty days after June twenty-eight, nineteen hundred sixty-eight, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such contract and while the child is and continues to be both (i) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (ii) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; provided further that such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the contract with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child.

Reviser's Note: Source § 32-195.20:1.

Chapter 23.

Dental Service Corporations.

§ 38.1-835. Definitions.—As used in this chapter, unless the context requires otherwise:

1. "Dental service plan" or "plan" means a plan or arrangement under which prepaid dental services are or may be rendered to subscribers by participating dentists through a dental service plan corporation acting as agent for the participating dentists;

2. "Licensed dentist" means a dentist licensed by the Virginia Board of Dentistry or other appropriate State licensing authority;

3. "Participating dentist" means a licensed dentist who is participating in a dental service plan;

4. "Corporation" means a dental service plan corporation organized pursuant to the provisions of this chapter and the laws of this Commonwealth ;

5. "Subscriber" means an individual, partnership, association or corporation who or which contracts through a dental service plan corporation with participating dentists for dental services.

Reviser's Note: Source § 32-195.21.

§ 38.1-836. Formation of corporation; board of directors; corporation not to practice dentistry; license and renewal fees.—A group of licensed dentists may organize a nonstock, nonprofit dental service plan corporation, the certificate of incorporation of which shall include the following provisions in addition to other provisions necessary to carry out the provisions of this chapter and required by law:

1. There shall be a board of not less than twelve nor more than eighteen directors. The original board of directors shall be designated by the Governor and shall consist of (i) eight licensed dentists selected from twelve nominees submitted by the Virginia State Dental Association, and (ii) four persons who shall be residents of the Commonwealth who are not dentists. Of the original board the Governor shall designate two dentist members and one nondentist member to serve for one

year, two dentist members and one nondentist member to serve for two years, two dentist members and one nondentist member to serve for three years, and two dentist members and one nondentist member to serve for four years. Their successors shall be elected by the participating dentists to serve for a term of four years each. All vacancies occurring on the board shall be filled by the board. In electing successors and filling vacancies the original proportion of dentists and nondentists shall always be maintained.

2. A corporation shall not engage in the practice of dentistry.

3. The license and renewal fees paid by a corporation under this chapter shall be in lieu of all other State and local license fees or license taxes and State income taxes of the corporation.

Reviser's Note: Source § 32-195.22.

§ 38.1-837. Dental service plans.—Subject to the approval of the Commission, a corporation may, as agent for the participating dentists, adopt one or more dental service plans. Each plan shall include, in addition to other necessary provisions, the following:

1. The geographical area in which the plan shall operate, which area shall be approved by the Commission. Only one corporation shall operate in one area unless the Commission finds that the operation of more than one corporation in an area will promote the public welfare. Subscription contracts shall not be sold to persons residing outside the area of the plan unless they are regularly employed within the area. The subscription contract of a subscriber who neither lives nor is employed within the area shall be cancelled by notice given in accordance with the subscription contract.

2. That every licensed dentist practicing in the area shall have the right to become a participating dentist under such terms and conditions as are imposed on other participating dentists under similar circumstances.

3. That a participating dentist shall have the right to engage in other practice.

4. That the private dentist-patient relationship shall be maintained and the subscriber shall at all times have free choice of any participating dentist who agrees to accept the subscriber as a patient.

5. That the participating dentist will agree to perform the dental services specified by the corporation at such rates of compensation as are determined from time to time by the corporation and are filed with the Commission and to abide by the bylaws, rules and regulations of the corporation.

6. A participating dentist may resign from a plan, but such resignation shall not, as to a subscriber whose contract is in force at the date of the resignation, become effective until the end of such subscriber's current contract year.

Reviser's Note: Source § 32-195.23.

§ 38.1-838. Contracts between participating dentists and subscribers.—Participating dentists, acting through the corporation as agent, may enter into contracts with subscribers to furnish specified dental services at specified rates to the subscriber or subscriber's members, officers or employees. Contracts may vary as to services and rates.

Reviser's Note: Source § 32-195.24.

§ 38.1-839. Contracts with other corporations; substitution of services.—A corporation may enter into contracts with any other corporations within or without this Commonwealth for the interchange of services to those included in subscription or other like contracts and may provide in subscription contracts for the substitution of such services in lieu of those therein recited.

Reviser's Note: Source § 32-195.25.

§ 38.1-840. Contracts and liability thereon; tort liability of participants.—All licensed dentists

participating in a plan shall be jointly and severally liable on all contracts made for the purposes of the plan by them or by their agent for them. Each such contract executed by their agent on their behalf may be signed by the agent alone, and a contract so signed shall be binding on the principals and not on the agent. Actions for breach of such contracts may be brought against the principals naming the agent as the sole defendant, and a judgment in favor of the plaintiff may be satisfied out of the assets of the plan in the custody of the agent or out of the assets of each and all of the principals. A licensed dentist may be admitted to a plan at any time and will then automatically become liable on all its outstanding contracts. Each participant shall be liable for his own torts and not for the torts of any other participant or of the agent.

Reviser's Note: Source § 32-195.26.

§ 38.1-841. Application of certain Code provisions relating to insurance.—Unless otherwise specifically provided, no provision of this title except this chapter and §§ 38.1-29, 38.1-44 to 38.1-57, 38.1-99 to 38.1-104, 38.1-159 to 38.1-165, 38.1-174 to 38.1-178, and 38.1-342.1 shall, insofar as they are not inconsistent with this chapter, apply to the operation of corporations and plans hereunder.

Reviser's Note: Source § 32-195.27.

§ 38.1-842. License required for each plan; application for license; expiration; fee.—It shall be unlawful to operate a plan without a license issued by the Commission. The corporation as agent for the participating dentists shall apply for a license for each plan and furnish such relevant information as the Commission requires. Each license shall expire at midnight on the following thirtieth day of June. With each application for a license a filing fee of fifty dollars shall be paid; and if the license is issued, the filing fee shall serve as a license fee for the remaining portion of the license year.

Reviser's Note: Source § 32-195.28.

§ 38.1-843. Renewal licenses and fees therefor.—Unless the corporation notifies the Commission that it does not wish a renewal license for a plan, the corporation shall be deemed to have applied for a renewal license for that plan and shall pay on the first day of July of each year a renewal fee. If the plan has fewer than five thousand and one subscribers, the renewal fee shall be fifty dollars. If the plan has more than five thousand but fewer than ten thousand and one subscribers, the renewal fee shall be one hundred dollars. If the plan has more than ten thousand but fewer than twenty thousand and one subscribers, the renewal fee shall be one hundred and fifty dollars. If the plan has more than twenty thousand subscribers, the renewal fee shall be two hundred dollars.

The number of subscribers shall be counted as of the first day of June.

Reviser's Note: Source § 32-195.29.

§ 38.1-844. Solicitation of contracts; salesman's license required; application; issuance; fee.—Subscription contracts may be solicited outside the principal office of a plan only through licensed salesmen. The requirements and procedures governing the issuance of salesmen's licenses and the payment of fees related thereto shall be the same as those for agents as provided in Article 3 of Chapter 7 of this title. No salesman's license shall be issued unless the Commission is satisfied that the applicant is a person of good character and reputation and competent to perform the obligations of a salesman of subscription contracts.

Reviser's Note: Source § 32-195.30.

§ 38.1-845. Misleading advertising, etc., prohibited.—In the operation of a plan, it shall be unlawful to use any misleading advertising matter or subscription applications or contracts, whether written or oral.

Reviser's Note: Source § 32-195.32.

§ 38.1-846. Power of Commission to issue and enforce injunctions.—The Commission shall have the jurisdiction and power of a court of equity to issue temporary and permanent injunctions restraining violations or attempted violations of this chapter and to enforce such injunctions by fine

or imprisonment.

Reviser's Note: Source § 32-195.33.

§ 38.1-847. Power of Commission to impose penalties and revoke licenses.—The Commission may, by judgment entered after a hearing on notice duly served on the defendant not less than ten days before the date of the hearing, if it be proved that the defendant has violated any provision of this chapter or any lawful order of the Commission issued under this chapter, impose a penalty not exceeding one thousand dollars, which shall be collectible by the process of the Commission as provided by law.

In addition to imposing such penalty or without imposing such penalty the Commission, in any such case, may revoke any license issued by it to the defendant.

Reviser's Note: Source § 32-195.34.

§ 38.1-848. Appeals.—Any person aggrieved by any final or interlocutory judgment, order or decree of the Commission may appeal, as a matter of right, to the Supreme Court of Virginia.

Reviser's Note: Source § 32-195.35.

Chapter 24.

Optometric Service Corporations.

§ 38.1-849. Definitions.—As used in this chapter, unless the context requires otherwise:

1. "Association" means the Virginia Optometric Association;

2. "Optometric service plan" or "plan" means a plan or arrangement under which prepaid optometric services are or may be rendered to subscribers by participating optometrists through an optometric service plan corporation acting as agent for the participating optometrists;

3. "Licensed optometrist" means an optometrist licensed by the Virginia State Board of Examiners in Optometry or other appropriate State licensing authority;

4. "Participating optometrist" means a licensed optometrist who is participating in an optometric service plan;

5. "Corporation" means an optometric service plan corporation organized pursuant to the provisions of this chapter and the laws of this Commonwealth;

6. "Subscriber" means an individual, partnership, association or corporation who or which contracts through an optometric service plan corporation with participating optometrists for optometric services.

Reviser's Note: Source § 32-195.36.

§ 38.1-850. Formation of corporation; board of directors; corporation not to practice optometry; license and renewal fees.—A group of licensed optometrists may organize a nonstock, nonprofit optometric service plan corporation, the certificate of incorporation of which shall include the following provisions in addition to other provisions necessary to carry out the provisions of this chapter and required by law:

1. There shall be a board of not less than twelve nor more than eighteen directors. The original board of directors shall be designated by the Executive Committee of the Virginia Optometric Association and shall consist of (i) eight licensed optometrists selected from twelve nominees submitted by the Association and (ii) four persons who shall be residents of this Commonwealth who are not optometrists. Of the original board the Executive Committee of the Virginia Optometric Association shall designate two optometrist members and one nonoptometrist member to

serve for one year, two optometrist members and one nonoptometrist member to serve for two years, two optometrist members and one nonoptometrist member to serve for three years, and two optometrist members and one nonoptometrist member to serve for four years. Their successors shall be elected by the participating optometrists to serve for a term of four years each. All vacancies occurring on the board shall be filled by the board. In electing successors and filling vacancies the original proportion of optometrists and nonoptometrists shall always be maintained.

2. A corporation shall not engage in the practice of optometry.

3. The license and renewal fees paid by a corporation under this chapter shall be in lieu of all other State and local license fees or license taxes and State income taxes of the corporation.

Reviser's Note: Source § 32-195.37.

§ 38.1-851. Optometric service plans.—Subject to the approval of the Commission, a corporation may , as agent for the participating optometrists, adopt one or more optometric service plans. Each plan shall include, in addition to other necessary provisions, the following:

1. The geographical area in which the plan shall operate, which area may include the entire Commonwealth . Only one corporation shall operate in the area unless the Commission finds that the operation of more than one corporation will promote the public welfare. Subscription contracts shall not be sold to persons residing outside the area unless they are regularly employed within the area. The subscription contract of a subscriber who neither lives nor is employed within the area shall be cancelled by notice given in accordance with the subscription contract.

2. That every licensed optometrist participating in the area shall have the right to become a participating optometrist under such terms and conditions as are imposed on other participating optometrists under similar circumstances.

3. That a participating optometrist shall have the right to engage in other practice.

4. That the private optometrist-patient relationship shall be maintained and the subscriber shall at all times have free choice of any participating optometrist who agrees to accept the subscriber as a patient.

5. That the participating optometrist will agree to perform the optometric services specified by the corporation at such rates of compensation as are determined from time to time by the corporation and are filed with the Commission and to abide by the bylaws, rules and regulations of the corporation.

6. A participating optometrist may resign from a plan, but such resignation shall not, as to a subscriber whose contract is in force at the date of the resignation, become effective until the end of such subscriber's current contract year.

Reviser's Note: Source § 32-195.38.

§ 38.1-852. Contracts between participating optometrists and subscribers.—Participating optometrists, acting through the corporation as agent may enter into contracts with subscribers to furnish specified optometric services at specified rates to the subscriber or subscriber's members, officers or employees. Contracts may vary as to services and rates.

Reviser's Note: Source § 32-195.39.

§ 38.1-853. Contracts with similar corporations and with optical laboratories; substitution of services.—A corporation may enter into contracts with like or similar corporations within or without this Commonwealth for the interchange of services to those included in subscription or other like contracts and may provide in subscription contracts for the substitution of such services in lieu of those therein recited. A corporation may also enter into contracts with optical laboratories to provide materials pursuant to contracts with subscribers or subscriber's members, officers or employees.

Reviser's Note: Source § 32-195.40.

§ 38.1-854. Execution of contracts and liability thereon; tort liability of participants.—All licensed optometrists participating in a plan shall be jointly and severally liable on all contracts made for the purposes of the plan by them or by their agent for them. Each such contract executed by their agent on their behalf may be signed by the agent alone, and a contract so signed shall be binding on the principals and not on the agent. Actions for breach of such contracts may be brought against the principals naming the agent as the sole defendant, and a judgment in favor of the plaintiff may be satisfied out of the assets of the plan in the custody of the agent or out of the assets of each and all of the principals. A licensed optometrist may be admitted to a plan at any time and will then automatically become liable on all its outstanding contracts. Each participant shall be liable for his own torts and not for the torts of any other participant or of the agent.

Reviser's Note: Source § 32-195.41.

§ 38.1-855. Application of certain Code provisions relating to insurance.—Unless otherwise specifically provided, no provision of this title except this chapter and §§ 38.1-29, 38.1-44 to 38.1-57, 38.1-99 to 38.1-104, 38.1-159 to 38.1-165, 38.1-174 to 38.1-178, and 38.1-342.1 shall, insofar as they are not inconsistent with this chapter, apply to the operation of corporations and plans hereunder.

Reviser's Note: Source § 32-195.42.

§ 38.1-856. License required for each plan; application for license; expiration; fee.—It shall be unlawful to operate a plan without a license issued by the Commission. The corporation as agent for the participating optometrists shall apply for a license for each plan and furnish such relevant information as the Commission requires. Each license shall expire at midnight on the following thirtieth day of June. With each application for a license a filing fee of fifty dollars shall be paid; and if the license is issued, the filing fee shall serve as a license fee for the remaining portion of the license year.

Reviser's Note: Source § 32-195.43.

§ 38.1-857. Renewal of licenses and fees therefor.—Unless the corporation notifies the Commission that it does not wish a renewal license for a plan, the corporation shall be deemed to have applied for a renewal license for that plan and shall pay on the first day of July of each year a renewal fee. If the plan has fewer than five thousand and one subscribers, the renewal fee shall be fifty dollars. If the plan has more than five thousand but fewer than ten thousand and one subscribers, the renewal fee shall be one hundred dollars. If the plan has more than ten thousand but fewer than twenty thousand and one subscribers, the renewal fee shall be one hundred fifty dollars. If the plan has more than twenty thousand subscribers, the renewal fee shall be two hundred dollars.

The number of subscribers shall be counted as of the first day of June.

Reviser's Note: Source § 32-195.44.

§ 38.1-858. Solicitation of contracts; salesman's license required; application; issuance; fee.—Subscription contracts may be solicited outside the principal office of a plan only through licensed salesmen. The requirements and procedures governing the issuance of salesmen's licenses and the payment of fees related thereto shall be the same as those for agents as provided in Article 3 of Chapter 7 of this title. No salesman's license shall be issued unless the Commission is satisfied that the applicant is a person of good character and reputation and competent to perform the obligations of a salesman of subscription contracts.

Reviser's Note: Source § 32-195.45.

§ 38.1-859. Misleading advertising, etc., prohibited.—In the operation of a plan, it shall be unlawful to use any misleading advertising matter or subscription applications or contracts, whether written or oral.

Reviser's Note: Source § 32-195.47.

§ 38.1-860. Power of Commission to issue and enforce injunctions.—The Commission shall have the jurisdiction and power of a court of equity to issue temporary and permanent injunctions restraining violations or attempted violations of this chapter and to enforce such injunctions by fine

or imprisonment.

Reviser's Note: Source § 32-195.48.

§ 38.1-861. Power of Commission to impose penalties and revoke licenses.—The Commission may, by judgment entered after a hearing on notice duly served on the defendant not less than ten days before the date of the hearing, if it be proved that the defendant has violated any provision of this chapter or any lawful order of the Commission issued under this chapter, impose a penalty not exceeding one thousand dollars, which shall be collectible by the process of the Commission as provided by law.

In addition to imposing such penalty, or without imposing such penalty, the Commission, in any such case, may revoke any license issued by it to the defendant.

Reviser's Note: Source § 32-195.49.

§ 38.1-862. Appeals.—Any person aggrieved by any final or interlocutory judgment, order or decree of the Commission may appeal, as a matter of right, to the Supreme Court of Virginia.

Reviser's Note: Source § 32-195.50.

2. That Chapters 11, 11.1 and 11.2 of Title 32 of the Code of Virginia containing §§ 32-168 through 32-195.50 are repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: The last clause is new and is intended to dispel any doubt as to whether a record ordered sealed by a court is subject to opening under the Virginia Public Records Act (§§ 42.1-76, et seq.).

A BILL to amend and reenact § 42.1-78 of the Code of Virginia, relating to Virginia Public Records Act.

Be it enacted by the General Assembly of Virginia:

1. That § 42.1-78 of the Code of Virginia is amended and reenacted as follows:

§ 42.1-78. Confidentiality safeguarded.—Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter *and no provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court .*

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: The only changes proposed in these sections are adjustments of cross-references to the appropriate sections of proposed Title 32.1.

A BILL to amend and reenact §§ 46.1-375 and 57-48 of the Code of Virginia, relating to motor vehicle operators' licenses and definitions related to solicitation of contributions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.1-375 and 57-48 of the Code of Virginia are amended and reenacted as follows:

§ 46.1-375. What license to contain; form, effect, etc., of Uniform Donor Document.—A. Every such license shall bear thereon the number assigned to the licensee and his social security number,

which may be the number assigned to the licensee, a dated color photograph of the licensee, the licensee's name, year, month and date of birth, residence address including the city or county of actual residence, a brief description of the licensee for the purpose of identification, and also a space for the signature of the licensee and any other information deemed necessary by the Commissioner for the administration of this title. The license shall be cardboard or other suitable material or combination thereof and in a form to be determined by the Commissioner.

B. Every license issued, on and after January one, nineteen hundred seventy-seven, shall also bear thereon the following document which the person licensed may complete.

UNIFORM DONOR DOCUMENT
OF .....
Print or type name of donor

In the hope that I may help others, I hereby make this anatomical gift without cost to my estate, to take effect upon my death. The words and marks below indicate my desires.
I give:
(a) ..... eyes and any other needed organs or parts
(b) ..... only the following organs or parts
.....
Specify the organ(s) or part(s)
for the purposes of transplantation, therapy, medical research or education;
Limitations or special wishes, if any: .....
Signed by the donor and the following two witnesses in the presence of each other:

Signature of Donor	Date of Birth of Donor
Date Signed	City & State
Witness	Witness

This is a legal document under ~~the Uniform Anatomical Gift Act~~ *Article 2 of Chapter 8 of Title 32.1 of the Code of Virginia* or similar laws.

C. The document, if completed by a licensee who is eighteen years of age or older in compliance with all requirements of *Article 2 of* Chapter ~~19.2 (§ 32-364.3 et seq.)~~ *8* of Title ~~32~~ *32.1* of the Code of Virginia, shall be effective as a gift of all or part of the body pursuant to § ~~32-364.4~~ *32.1-290* . The gift becomes effective upon the death of the donor, and the actual costs of the removal of the organ shall not be assessed against the donor's estate. The document shall be subject to all conditions for execution, delivery, amendment, and revocation as set out in *Article 2 of* Chapter ~~19.2~~ *8* of Title ~~32~~ *32.1* of the Code of Virginia.

D. A separate written statement shall be furnished to each recipient of a license explaining the significance of the Uniform Donor Document and of procedures under ~~the Uniform Anatomical Gift Act~~ *Article 2 of Chapter 8 of Title 32.1 of the Code of Virginia* applicable to such document.

E. The provisions of *Article 2 of* Chapter ~~19.2~~ *8* of Title ~~32~~ *32.1* of the Code shall be applicable to any gift made as provided in this section.

§ 57-48. Definitions.–Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

(1) "Administrator." The Administrator of Consumer Affairs, or a member of his staff to whom he may delegate his duties under this chapter.

(2) "Charitable organization." Any person which is or holds itself out to be organized or operated for any charitable purpose, or any person which solicits or obtains contributions solicited from the public. This definition shall not be deemed to include any church or convention or association of churches, primarily operated for non-secular purposes and no part of the net income of which inures to the direct benefit of any individual; nor shall it include any political party as defined in § 24.1-1 or any political campaign committee required by State or federal law to file a

report or statement of contributions and expenditures; nor shall it include any labor union registered under § 40.1-76 nor any trade association; nor shall it include any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt charitable organization or on behalf of an organization excluded from the definition of charitable organization.

(3) "Charitable purpose." Any charitable, benevolent, humane, philanthropic, patriotic, or eleemosynary purpose and the purposes of influencing legislation or influencing the actions of any public official or instigating, prosecuting, or intervening in litigation.

(4) "Contribution." Any gift, bequest, devise or other grant of any money, credit, financial assistance or property of any kind or value, including the promise to contribute, except payments by the membership of an organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, and except money, credit, financial assistance or property received from any governmental authority. The term "contribution" shall not include any donation of blood or any gift made pursuant to ~~the Uniform Anatomical Gift Act~~ *Article 2 of Chapter 8 of Title 32.1 of the Code* .

(5) "Federated fund-raising organization." Any federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(6) "Fund-raising expenses." The expenses of all activities that constitute or are an integral and inseparable part of a solicitation.

(7) "Membership." Those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(8) "Parent organization." That part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches or affiliates.

(9) "Person." Any individual, organization, trust, foundation, association, partnership, corporation, society, or other group or combination acting as a unit.

(10) "Professional fund-raising counsel." Any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization, but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a registered or exempt charitable organization or the bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional fund-raising counsel.

(11) "Professional solicitor." Any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or any person who, for a financial or other consideration, plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fund-raising counsel. A bona fide salaried officer or employee of a registered or exempt charitable organization or a bona fide salaried officer or employee of a registered parent organization shall not be deemed to be a professional solicitor.

(12) "Sale," "sell" and "sold." The transfer of any property or the rendition of any service to any person in exchange for consideration, including any purported contribution without which such property would not have been transferred or such services would not have been rendered.

(13) "Solicit" and "solicitation." The request or appeal, directly or indirectly, for any contribution on the plea or representation that such contribution will be used for a charitable purpose, including without limitation, the following methods of requesting such contribution:

(a) Any oral or written request;

(b) Any announcement to the press, over the radio or television, or by telephone or ~~telegraph~~ concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(c) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support;

(d) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket, or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable purpose.

Solicitation as defined herein, shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the same actually receives any contribution.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: These proposed changes reflect the transfer of the Division of Consolidated La*boratory* Services out of the Department of Health.

A BILL to amend and reenact § 52-11.1 of the Code of Virginia, relating to cooperation between State Health Commissioner and State Police.

Be it enacted by the General Assembly of Virginia:

1. That § 52-11.1 of the Code of Virginia is amended and reenacted as follows:

§ 52-11.1. State Health Commissioner to cooperate.—The State Health Commissioner shall cause to be furnished to the Department of State Police all such assistance ~~,~~ ~~cooperation and facilities,~~ requested by the Superintendent of State Police or the authorized officers and agents of the Department of State Police ~~,~~ as may be afforded by the ~~laboratories and~~ technical staff of the Department of Health and the Chief Medical Examiner.

The State Health Commissioner may, in his discretion, furnish to any other law-enforcement officer or agency, such assistance ~~,~~ ~~cooperation and facilities~~ as are afforded by the ~~laboratories and~~ technical staff of the Department of Health and the Chief Medical Examiner.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: The language of these two sections was updated and they are proposed to be transferred to Title 53 (Prisons and Other Methods of Correction), a more appropriate placement.

A BILL to amend the Code of Virginia by adding sections numbered 53-19.22:2 and 53-135.2 and to repeal §§ 32-81 and 32-82 of the Code of Virginia, the added and repealed sections relating to quarantine of prisoners in State correctional institutions and jails.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 53-19.22:2 and 53-135.2 as follows:

§ 53-19.22:2. Quarantine of prisoners in State correctional institutions.—The Governor may, upon the application of the person in charge of any State correctional institution or facility when requested in writing so to do by the physician at such institution or facility, have removed from such institution or facility any inmate therein who has contracted any contagious or infectious disease dangerous to the public health to some place to be designated by the Governor. When any such inmate is so removed, he shall be safely kept and treated for such disease and, as soon as he recovers his health, be returned to such institution or facility unless the term of his imprisonment has expired, in which event he shall be discharged, but not until all danger of his spreading contagion has passed. Expenses incurred under and by reason of this section shall be borne by the Commonwealth.

Reviser's Note: Source § 32-81.

§ 53-135.2. Quarantine of prisoners in jail.—A judge of a circuit court is authorized and empowered to have removed from any jail or other place of detention in any county or city within his jurisdiction, upon the application of the person in charge of such jail or place of detention when requested so to do in writing by the physician serving such jail or other place of detention, all persons confined in such jail who have contracted any contagious or infectious disease dangerous to the public health to some place designated by the judge. When such persons are so removed, they shall be safely kept and receive proper care and attention including medical treatment, and as soon as they are restored to health, they shall be returned to the jail or place of detention from whence they were moved except that any person whose term has expired shall be discharged, but not until all danger of his spreading contagion has passed. Expenses incurred under and by reason of this section shall be paid by the county or city in which the jail or place of detention is located.

2. That §§ 32-81 and 32-82 of the Code of Virginia are repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: Source § 32-82.

A BILL to amend and reenact §§ 54-260.74 and 54-321.1 of the Code of Virginia and to further amend the Code of Virginia by adding in Chapter 12 of Title 54 an article numbered 7 containing sections numbered 54-325.1 through 54-325.8 and to repeal §§ 32-137, 32-137.1, 32-423, 32-424, 32-424.1, 32-427, 32-364.3:1 and 32-364.4:1, so as to make certain adjusting and other changes in accordance with the revision of Title 32 of such Code, relating to the laws of Virginia generally relating to health, which revision repeals Title 32 and enacts Title 32.1 in lieu thereof.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-260.74 and 54-321.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 54 an article numbered 7 containing sections numbered 54-325.1 through 54-325.8 as follows:

§ 54-260.74. Refusal, suspension or revocation of license; offenses.—Whenever the Board shall have reason to believe that any person to whom a license has been issued has become unfit to practice within the funeral service profession, or has violated any of the provisions of this chapter ; or any rule or regulation ~~thereof~~ *of the Board* , or whenever written complaint ; charging the holder of a license for the practice of funeral service with the violation of any provision of this chapter ; is filed with the Board, the Board shall be governed by the provisions of §§ ~~9-6.10 through 9-6.14~~ *the Administrative Process Act* .

The Board may also refuse to issue or may refuse to renew or may suspend or may revoke any license ; or may place the holder thereof on a term of probation after proper hearing upon finding the holder of such license to be guilty of acts or omissions including the following:

(1) Conviction of a felony or a crime involving moral turpitude.

(2) Unprofessional conduct which is hereby defined to include -

(a) Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;

(b) False or misleading advertising as the holder of a license for practice of funeral service;

(c) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending; providing, that this shall not be deemed to prohibit general advertising;

(d) Employment by the licensee of persons known as "cappers," or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;

(e) Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(f) The direct or indirect payment or offer of payment of a commission by the licensee, his agents, or employees for the purpose of securing business;

(g) Gross immorality, including being under the influence of alcohol or drugs;

(h) Aiding or abetting an unlicensed person to practice within the funeral service profession;

(i) Using profane, indecent or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;

(j) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

(k) Violating or cooperating with others to violate any of the provisions of this chapter or of the rules and regulations of the Board;

(l) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;

(m) Refusing to ~~promptly~~ surrender *promptly* the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;

(n) Knowingly making any false statement on a certificate of death;

(o) Violation of any provisions of Chapter 5 (§ 11-24 et seq.) of Title 11 and Chapter ~~18.1 (§ 32-353.4 et seq.)~~ *7* of Title ~~32~~ *32.1* of the Code of Virginia.

No person licensed for the practice of funeral service shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death nor shall a dead human body be cremated *, or buried at sea* until permission of the medical examiner ~~, or some other duly qualified person acting in the capacity of the medical examiner, if there be no medical examiner,~~ has first been obtained *as provided in § 32.1-284* .

No funeral service establishment shall accept a dead human body from any public officer, excluding the ~~State~~ *Chief* Medical Examiner or his duly designated assistant, or employee, or from the official of any institution, hospital, nursing home, public or private, or from a physician or surgeon, or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral expenses of such decedent. If any such kin be found, his or her authority and directions shall govern the disposal of the remains of such decedent. Any funeral service establishment

receiving such remains in violation hereof shall make no charge for any service in connection with such remains prior to delivery of same as stipulated by such kin; provided, however, this section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the next of kin or the persons chargeable with the funeral expenses have been notified.

No company, corporation or association engaged in the business of paying or providing for the payment of the expenses of the funeral, burial or other similar expenses of deceased members or of certificate holders therein, or engaged in the business of providing any insurance upon the life of any individual, under which contract of insurance any obligation might or could arise to care for the remains of the insured, shall contract to pay or shall pay any such insurance or such benefits, or any part of either such insurance or benefits, to any funeral establishment or to any licensee or to any individual in any manner which might or could deprive the representative, next of kin, or family of such deceased person from, or in any way control them or any of them in procuring such funeral establishment, person licensed for the practice of funeral service or other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin, or family may desire.

No person licensed for the practice of funeral service or anyone acting for him or her shall have any part in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a person licensed for the practice of funeral service or to choose a funeral establishment except where the body or a part thereof is given for anatomical purposes.

Nothing herein contained shall be construed to govern or limit the authority of any administrator or executor, trustee, or other person having a fiduciary relationship with the deceased.

§ 54-321.1. Suspension or revocation for violation of hospital licensing law.—Whenever the State Board of Health has suspended or revoked any license granted under the provisions of ~~Chapter 16 (§ 32-207 et seq.) of Title 32, known as the Virginia Hospital Licensing and Inspection Law,~~ *Article 1 of Chapter 5 of Title 32.1 of the Code* and such suspension or revocation resulted from a violation of any provision of this chapter, or because of illegal practice, or conduct or practices detrimental to the welfare of any patient or inmate in such hospital, a report of such action shall be made by the State Board of Health to the Board of Medicine. If it appears from such report, or from other evidence produced before the Board of Medicine, that the legally responsible head of such hospital is a practitioner of any branch of the healing arts, it may in its discretion suspend or revoke the certificate or license to practice of such person, or prosecute such person if unlicensed. The last named Board may suspend or revoke the certificate of or prosecute for unlicensed practice any person subject to the laws of Virginia regulating the practice of the healing arts who is practicing in or employed by such hospital if such practitioner or employee is guilty of, responsible for, or implicated in illegal practices for which the hospital license has been suspended or revoked. An appeal from the action of such Board in suspending or revoking any such certificate or license may be had, and a new certificate or license granted, as provided in §§ 54-320 and 54-321.

Article 7.

Miscellaneous Provisions

Related to Medicine and Other Healing Arts.

§ 54-325.1. Hospitals and other health care institutions to report diciplinary actions against and certain disorders of health professionals; immunity from liability.—A. The chief administrative officer of every hospital or other health care institution in the Commonwealth shall, after consultation with the chief of staff of such institution, report to the appropriate board the following information regarding any person licensed under Chapters 12 (§ 54-273 et seq.), 8 (§ 54-146 et seq.), 13.1 (§ 54-367.1 et seq.), 15.1 (§ 54-524.1 et seq.) or 28 (§ 54-923 et seq.) of this title unless exempted under subsection D. hereof:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or at any other health care institution, for the treatment of any of the following conditions:

a. Drug addiction;

b. Chronic alcohol abuse; or

c. A psychiatric illness which may render the health professional a danger to himself, the public or his patients.

2. Any information of which he may become aware in his official capacity indicating that such health professional may be guilty of unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

3. Any disciplinary action, including but not limited to termination of employment, termination of privileges or restriction or privileges, taken by the institution as a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

Any report required by this section shall be in writing directed to the secretary of the appropriate board, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported.

B. The State Health Commissioner shall report to the appropriate board any information of which the Department of Health may become aware in the course of its duties indicating that such a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

C. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Medical records or information learned or maintained in connection with an alcohol or drug prevention function which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 21 U.S.C. § 1175(a), 42 U.S.C. § 4582(a), or regulations promulgated thereunder.

Reviser's Note: Source § 32-137.1. This section is proposed to be transferred without material change to a more appropriate placement in Title 54.

§ 54-325.2. Authority to consent to surgical and medical treatment of certain minors.—A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local superintendents of public welfare or social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction and (ii) minors who are taken into custody pursuant to § 63.1-248.9 of the Code, when a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections with respect to any minor who is sentenced or committed to his custody or the custody of the Board of Corrections.

4. Upon the principal executive officers of State institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to

receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of this Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon a licensed health professional or licensed hospital by reason of lack of consent to such medical or surgical treatment, provided however that in such case of a minor fourteen years of age or older who is physically capable of giving consent, such consent must be first obtained.

D. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease which the State Board of Health requires to be reported;

2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of §§ 18.2-76 and 54-325.3 through 54-325.6;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203 of this Code;

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

E. Except for the purposes of §§ 18.2-76 and 54-325.3 through 54-325.6, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

F. Any minor seventeen years of age may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. Provided, however, such parental consent to donate blood by any minor seventeen years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

Reviser's Note: Source § 32-137. This section is proposed to be transferred to a more appropriate placement in Title 54. Cross-references in D.2. and E. are to provisions regarding sexual sterilization and abortion. Subsection D. contains a new provision regarding the capacity to consent. Subitem D.4., relating to consent by minors for outpatient treatment for mental illness or emotional disturbance, is new.

§ 54-325.3. Sexual sterilization of married person eighteen years or older or any person twenty-one years or older.—Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed to practice medicine in this Commonwealth shall be either civilly or criminally liable by reason of having performed a vasectomy, salpingectomy or other surgical sexual sterilization procedure upon any married person eighteen years of age or over or upon any person twenty-one years of age or over, provided a request in writing is made by such person and by his spouse, if there be one, prior to the performance of such surgical operation and provided further that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation. No such request shall be necessary for the spouse of the person requesting such surgical operation if the person requesting such operation shall, at the time of the request, state in writing under oath that they have lived separate and apart without any cohabitation and without interruption for a

period of one year or more immediately prior to such sworn statement and request or if the person requesting such operation exhibits an executed separation agreement signed by both spouses or a certified copy of a decree of divorce from bed and board. The provisions of this section shall not be applicable in the case of any person who has not theretofore become the natural or adoptive parent of a child if such surgical operation is performed prior to thirty days from the date of consent or request therefor.

Reviser's Note: Source § 32-423. Please refer to the Reviser's Note under § 32.1-325.6.

§ 54-325.4. Sexual sterilization of person under twenty-one.—A. Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed to practice medicine in this Commonwealth shall be either civilly or criminally liable by reason of having performed a vasectomy, salpingectomy or other surgical sexual sterilization procedure upon any person under the age of twenty-one years to whom the provisions of § 54-325.3 are not applicable if the circuit court of the county or city wherein such person resides, upon petition of (i) the parent or parents, if they be living, or the committee, guardian or next friend of such person and (ii) the spouse of such person if there be one, shall determine that the operation is in the best interest of such person and shall enter an order authorizing the physician or surgeon to perform such operation and such order has become final. In any such proceeding, the person shall be made a party defendant and served with process, and a discreet and competent attorney-at-law shall be appointed as guardian ad litem for such person to represent and protect such person's interest. The judge of the court in which the petition is filed may, at his discretion, waive all fees and court costs in connection with such court proceeding.

Reviser's Note: Source § 32-424. Item (ii), relating to the consent of the spouse, is new. Proposed to be deleted is language requiring certain findings by the court prior to entry of an order.

§ 54-325.5. Sexual sterilization of person adjudicated mentally incompetent.—Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed to practice medicine in this Commonwealth shall be either civilly or criminally liable by reason of having performed a vasectomy, salpingectomy, or other surgical sexual sterilization procedure upon any person who has been adjudicated legally incompetent pursuant to Chapter 4 of Title 37.1 of the Code of Virginia, provided that the circuit court of the county or city wherein such incompetent resides, upon petition of the spouse, parent or parents, if they be living, or the committee, guardian or next friend of such incompetent, shall determine that the operation is in the best interest of such incompetent person and society and shall enter an order authorizing the physician or surgeon to perform such operation and such order has become final. In any such proceeding, the incompetent shall be made a party defendant and served with process, and a discreet and competent attorney-at-law shall be appointed as guardian ad litem for such incompetent to represent and protect such incompetent's interest. The judge of the court in which the petition is filed may, at his discretion, waive all fees and court costs in connection with such court proceeding.

Reviser's Note: Source § 32-424.1. The 21-year age requirement is proposed to be deleted, as is the requirement that certain findings be made by the court prior to entry of an order.

§ 54-325.6. Sections inapplicable to certain medical or surgical treatments.—Nothing in §§ 54-325.3 through 54-325.5 shall apply to or be construed so as to prevent, control or regulate the medical or surgical treatment for sound therapeutic reasons of any person in this Commonwealth by a physician or surgeon licensed to practice medicine in this Commonwealth, which treatment may require sexual sterilization or may involve the nullification or destruction of the reproductive functions. For the purposes of this section the sterilization of a person whose health would be endangered by a pregnancy shall be deemed a medical or surgical treatment for sound therapeutic reasons.

Reviser's Note: Source § 32-427. The last sentence is new. The preceding four sections, presently Chapter 27 of Title 32, are proposed to be transferred to Title 54 inasmuch as they are designed to give immunity to the physician performing sexual sterilization. Proposed is inclusion of language to make it clear that married persons 18-21 are included within the provisions of the statute, in such a fashion as to provide physician immunity.

§ 54-325.7. When person deemed medically and legally dead.—A person shall be medically and legally dead if, (a) in the opinion of a physician duly authorized to practice medicine in this

Commonwealth , based on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition which directly or indirectly caused these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these functions ceased; or (b) in the opinion of a consulting physician, who shall be duly licensed and a specialist in the field of neurology, neurosurgery, or electroencephalography, when based on the ordinary standards of medical practice, there is the absence of spontaneous brain functions and spontaneous respiratory functions and, in the opinion of the attending physician and such consulting physician, based on the ordinary standards of medical practice and considering the absence of spontaneous brain functions and spontaneous respiratory functions and the patient's medical record, further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such spontaneous functions, and, in such event, death shall be deemed to have occurred at the time when these conditions first coincide. Death, as defined in subsection (b) hereof, shall be pronounced by the attending physician and recorded in the patient's medical record and attested by the aforesaid consulting physician.

Notwithstanding any statutory or common law to the contrary, either of these alternative definitions of death may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

Reviser's Note: Source § 32-364.3:1. This section is proposed to be transferred without material change.

§ 54-325.8. Persons who may authorize postmortem examination of decedent's body.--Except in cases of death where official inquiry is authorized or required by law, any of the following persons after receiving actual notice of death, in order of priority stated, may authorize and consent to a postmortem examination and autopsy on a decedent's body for the purpose of determining the cause of death of the decedent, for the advancement of medical or dental education and research, or for the general advancement of medical or dental science; provided, that: (i) no person in a higher class exists or no person in a higher class is available at the time of death, (ii) there is no actual notice of contrary indications by the decedent, and (iii) there is no actual notice of opposition by a member of the same or a prior class.

The order of priority shall be as follows: (1) the spouse; (2) an adult son or daughter; (3) either parent; (4) an adult brother or sister; (5) a guardian of the person of the decedent at the time of his death; or (6) any other person authorized or under legal obligation to dispose of the body.

If the physician or surgeon has actual notice of contrary indications by the decedent or of opposition to an autopsy by a member of the same or a prior class, the autopsy shall not be performed. The persons authorized herein may authorize or consent to the autopsy after death or immediately before death. A surgeon or physician acting in accordance with the terms of this section shall not have any liability, civil or criminal, for the performance of the autopsy.

Reviser's Note: Source § 32-364.4:1. This section is proposed to be transferred to a more appropriate placement in Title 54.

2. That §§ 32-137, 32-137.1, 32-423, 32-424, 32-424.1, 32-427, 32-364.3:1 and 32-364.4:1 are repealed.

3. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.

Reviser's Note: Inasmuch as no use has been made of the information reported under this section to the State Registrar of Vital Statistics, other than publication of a yearly summary, this requirement is proposed to be deleted as superfluous. Proposed is a lessening of the penalty from a misdemeanor to a Class 3 misdemeanor.

A BILL to amend and reenact § 54-276.10 of the Code of Virginia, relating to reporting of certain wounds.

Be it enacted by the General Assembly of Virginia:

1. That § 54-276.10 of the Code of Virginia is amended and reenacted as follows:

§ 54-276.10. Physicians and others rendering medical aid to report certain wounds.—Any physician or other person who renders any medical aid or treatment to any person for any wound which such physician or other person knows or has reason to believe is a wound inflicted by a weapon specified in § 18.2-308 which wound such physician or other person believes or has reason to believe was not self-inflicted shall as soon as practicable report such fact, including the wounded person's name and address, if such is known, to the sheriff or chief of police of the county or city in which such treatment is rendered; provided, that if such medical aid or treatment is rendered in a hospital or similar institution, such physician or other person rendering such medical aid or treatment shall immediately notify the person in charge of such hospital or similar institution, who shall make such report forthwith.

~~In addition to any other immediate notification to law-enforcement authorities as required by this section, the persons responsible for making those reports shall also cause as soon as practicable a written report to be made on forms prescribed and furnished by the State Registrar of Vital Statistics, which shall include, but not necessarily be limited to the following information: the wounded person's name, residence, age, race, sex, city or county and state in which the wound was inflicted, date and time of injury, part of the body injured, and if known, relationship of person causing injury. These reports shall be made to the sheriff or chief of police of the county or city in which such treatment is rendered, who shall certify by his signature the receipt of the report and forward such report to the State Registrar of Vital Statistics on or before the tenth day of the month following the date of injury. Such reports shall be retained only for the period necessary to compile statistical data.~~

Any physician or other person failing to comply with this section shall be guilty of a *Class 3* misdemeanor. Any person participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be immune from any civil liability in connection therewith, unless it is proved that such person acted in bad faith or with malicious intent.

2. That this act shall be in force and effect on and after October one, nineteen hundred seventy-nine.