

REPORT OF THE
VIRGINIA CODE COMMISSION ON

**The Revision of
Title 54
of the Code of Virginia**

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 23

COMMONWEALTH OF VIRGINIA
RICHMOND
1988

MEMBERS OF COMMISSION

Theodore V. Morrison, Jr., Chairman
Dudley J. Emick, Jr., Vice Chairman
John A. Banks, Jr., Secretary
Russell M. Carneal
James P. Jones
H. Lane Kneedler
John Wingo Knowles
A. L. Philpott

STAFF

Legal and Research
Division of Legislative Services

Jessica F. Bolecek, Staff Attorney
Angela P. Bowser, Staff Attorney
Norma E. Szakal, Staff Attorney
Jane C. Lewis, Executive Secretary

Administrative and Clerical

Joan W. Smith, Virginia Code Commission
Sandra Levin, Virginia Code Commission

Report of the
Virginia Code Commission
on
The Revision of Title 54 of the Code of Virginia
to
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1988

TO: The Honorable Gerald L. Baliles
and
The General Assembly of Virginia

House Joint Resolution No. 32 of the 1984 Acts of Assembly directed the Virginia Code Commission to make a careful study of Title 54 of the Code of Virginia and report its findings in the form of a recodification of the title to the Governor and the General Assembly of Virginia. Reasons given for the recodification were that Title 54 has not been generally revised since 1974 and that the creation of the Department of Health Regulatory Boards in 1977 to improve the effectiveness of health regulatory boards resulted in the need to clarify the applicability of the general provisions of Title 54 to the boards within the Department of Commerce and the Department of Health Regulatory Boards.

In accordance with the mandate, the study has been completed. The result is a recodification of Title 54 into a new Title 54.1, comprised of five subtitles. The first subtitle includes the general provisions relating to the regulatory boards. Subtitle II pertains to the professions and occupations regulated by the Department of Commerce and boards within the Department. Subtitle III contains statutes regarding the professions and occupations regulated by boards within the Department of Health Professions (formerly the Department of Health Regulatory Boards). Subtitle IV includes statutes pertaining to attorneys and Subtitle V contains provisions relating to occupations regulated by local governing bodies. Due to this recodification several amendments to sections in Titles 2.1, 6.1, 9, 18.2 and 59.1 will be necessary and § 13.1-545 will be repealed.

The Commission has rewritten and combined sections or parts of sections to clarify provisions and to eliminate archaic or redundant language and obsolete provisions. Drafting notes following each section in proposed Title 54.1 explain the changes. The principal changes made by the Code Commission in the revision of Title 54 include:

1. Names of regulatory boards. -- The names of several of the regulatory boards within the Department of Commerce were standardized by changing "of" to "for" and by removing references to "Virginia," "State," "Examiners" and "Certification." The names of the regulatory boards within the Department of Health Professions were also standardized by removing references to "Virginia," "State" and "Examiners."
2. Department of Health Professions. -- The name of the Department of Health Regulatory Boards was changed to the Department of Health Professions and the name of the Council of Health Regulatory Boards changed to Board of Health Professions.
3. Athletic Board. -- The Athletic Board was relocated from Title 9 to proposed Title 54.1.
4. Branch Pilots. -- This chapter was significantly revised because many of its provisions were obsolete. Outdated penalty provisions were replaced with a general penalty section making any violation of the chapter a Class 1 misdemeanor. A provision was added requiring the Board for Branch Pilots to comply with the Administrative Process Act.
5. Class B Contractors. -- References to Class B contractors licenses were changed to registration to conform with the definition of "licensure" and "registration" in the general provisions of the subtitle.
6. Cosmetologists. -- References to cosmetics and the treatment of skin and nails were deleted from the Cosmetology chapter.
7. Penalties for violations. -- The penalties for violations of regulations or provisions of the chapter and subtitle were standardized and classified as Class 1 misdemeanors. Exceptions are noted in drafting comments found at the end of proposed sections.

8. Dealers in Junk and Secondhand Articles. -- This chapter (existing Chapter 21 of Title 54) is being repealed because there has been no indication that it is being used. Municipal corporations have the authority to regulate dealers in secondhand goods under § 15.1-866 of the Code of Virginia.
9. Antique Dealers. -- This chapter (existing Chapter 21.1 of Title 54) is being repealed. It is applicable to only one locality and that locality does not use it.
10. Professional Associations. -- This chapter (existing Chapter 25 of Title 54) is being repealed because research indicates that there are no professional associations filed as required by this chapter.
11. General provisions for health regulatory boards. -- Chapter 24 in proposed Subtitle III is the general provisions chapter and sets out for the first time the responsibilities and duties which are common to all health regulatory boards within the Department of Health Professions.
12. Separation of certain chapters. -- The Boards of Professional Counselors, Psychology and Social Work are presented in individual chapters. The Board of Pharmacy and Drug Control Act have also been set out as separate chapters.
13. Attorneys. -- The chapter was significantly revised and updated. Requirements regarding law-readers and admission of law professors to the Virginia State Bar were changed. Standards for license revocation were revised and provisions regarding solicitation of professional employment were rewritten.

The outline of proposed Title 54.1 and the revision of Title 54 of the Code of Virginia follow this text as Appendix I. Tables following the revision in Appendix II cross-reference the sections of Title 54 with equivalent sections in proposed Title 54.1 and vice versa. Appendix III lists additional sections in the Code of Virginia which must be amended, added or repealed due to the recodification.

During the course of its deliberations, the Code Commission held numerous open working sessions attended by representatives of state agencies and trade and professional groups affected by the revision. The members of the Commission appreciate the time and effort of those who participated in this study, especially David R. Hathcock, Director of the Department of Commerce, and Bernard L. Henderson, Jr., Director of the Department of Health Regulatory Boards.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 1988 Session to effectuate this revision.

Respectfully submitted,

Theodore V. Morrison, Jr., Chairman

Dudley J. Emick, Jr., Vice Chairman

John A. Banks, Jr., Secretary

Russell M. Carneal

James P. Jones

H. Lane Kneedler

John Wingo Knowles

A. L. Philpott

APPENDIX I

OUTLINE FOR RECODIFICATION OF TITLE 54

TITLE 54.1

PROFESSIONS AND OCCUPATIONS.

Subtitle I.

General Provisions Relating to Regulatory Boards.

Chapter

1. General Provisions.

Subtitle II.

Professions and Occupations Regulated by the
Department of Commerce and Boards
Within the Department.

2. General Provisions.
3. Department of Commerce.
4. Architects, Engineers, Land Surveyors and Certified Landscape Architects.
5. Asbestos Contractors and Workers.
6. Auctioneers.
7. Barbers.
8. Boxing and Wrestling Matches.
 - Article 1. General Provisions.
 - Article 2. Athletic Board.
 - Article 3. License, Permits and Requirements for Matches.
 - Article 4. Amateur Matches.
 - Article 5. Violations.
9. Branch Pilots
 - Article 1. Board for Branch Pilots.
 - Article 2. Examinatin and Licensure.
 - Article 3. Duties and Liabilities of Master, etc.
 - Article 4. Duties, Rights and Powers of Pilots.
 - Article 5. Fees and Charges.
 - Article 6. Offenses and Penalties Generally.
10. Commercial Driver Training Schools.
11. Contractors.
 - Article 1. Regulation of Contractors.
 - Article 2. Virginia Contractors Transaction Recovery Fund.
12. Cosmetologists.

13. Employment Agencies.
14. Geologists.
15. Hearing Aid Specialists.
16. Librarians.
17. Opticians.
18. Polygraph Examiners.
19. Private Security Services Businesses.
20. Public Accountancy.
21. Real Estate Brokers, Salesmen and Rental Location Agents.
 - Article 1. Regulation of Real Estate Brokers, Salespersons and Rental Location Agents.
 - Article 2. Virginia Real Estate Transaction Recovery Act.
22. Soil Scientists.
23. Waterworks and Wastewater Works Operators.

Subtitle III
Professions and Occupations Regulated by Boards Within
the Department of Health Professions

Chapter

24. General Provisions
25. Department of Health Professions
26. Audiology and Speech Pathology
27. Dentistry
 - Article 1. Board of Dentistry
 - Article 2. Licensure of Dentists
 - Article 3. Licensure of Dental Hygienists
28. Funeral Services
 - Article 1. Board of Funeral Directors and Embalmers
 - Article 2. Licensure of Funeral Establishments
 - Article 3. Licensure of Funeral Directors and Embalmers
 - Article 4. Registration of Surface Transportation and Removal Services
29. Medicine and Other Healing Arts
 - Article 1. General Provisions
 - Article 2. Board of Medicine
 - Article 3. Licensure of Physicians of Medicine and Osteopathy, Chiropractors, Podiatrists and Clinical Psychologists
 - Article 4. Licensure and Certification of Other Practitioners of the Healing Arts
 - Article 5. Approval of Educational Programs

- Article 6. General Standards of Practice
- Article 7. Sexual Sterilization
- Article 8. Natural Death Act
- 30. Nursing
 - Article 1. Board of Nursing
 - Article 2. Licensure of Professional Nurses
 - Article 3. Licensure of Practical Nurses
- 31. Nursing Home Administration
- 32. Optometry
 - Article 1. General Provisions
 - Article 2. Board of Optometry
 - Article 3. Licensure of Optometrists
 - Article 4. Certification for Administration of Diagnostic Pharmaceutical Agents
- 33. Pharmacy
 - Article 1. General Provisions
 - Article 2. Board of Pharmacy
 - Article 3. Licensure of Pharmacists
- 34. Drug Control Act
 - Article 1. General Provisions
 - Article 2. Permitting of Pharmacies
 - Article 3. Permitting of Wholesalers and Dealers
 - Article 4. Permitting of Manufacturers
 - Article 5. Standards and Schedules
 - Article 6. Misbranded and Adulterated Drugs and Cosmetics
 - Article 7. Controlled Paraphernalia
- 35. Professional Counseling
- 36. Psychology
- 37. Social Work
- 38. Veterinary Medicine

Subtitle IV.

Profession Regulated by the Supreme Court.

- 39. Attorneys.

Subtitle V.

Occupations Regulated by Local Governing Bodies.

- 40. Pawnbrokers.
- 41. Precious Metal Dealers.

TITLE 54.1.

PROFESSIONS AND OCCUPATIONS.

SUBTITLE I.

GENERAL PROVISIONS RELATING TO REGULATORY BOARDS.

CHAPTER 1.

GENERAL PROVISIONS.

§ 54.1-100. § 54-1-17. ~~Legislative findings; policy of Commonwealth~~ *Regulation of professions and occupations.* –The Virginia General Assembly finds that the right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

It is hereby declared to be the policy of the Commonwealth of Virginia that no No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. ~~Their~~ *The unregulated practice of the profession or occupation can harm or endanger the health, safety and welfare of the public , and when the potential for such harm is recognizable and not remote or dependent upon tenuous argument ; ;*

2. ~~Their~~ *The practice of the profession or occupation has inherent within it qualities peculiar to it that distinguish it from ordinary work and labor ; ;*

3. ~~Their~~ *The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability ; ; and*

4. The public is not effectively protected by other means.

~~Provided, however~~ No such regulation of a profession or occupation shall be imposed which is in conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia ; and periodically ; but no less than . Periodically and at least annually, all existing regulations shall be reviewed by the agency imposing agencies regulating a profession or occupation shall review such regulations to ensure that no such conflict exists.

Drafting Note: No change in the law.

§ 54.1-101. § 54-1. Copies of examinations filed by state agencies regulatory boards –Every state agency regulatory board , except the Board of Medicine, the State Board of Bar Examiners, the Virginia State Board of Dentistry, the State Board for Contractors, the State Board of for Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, the Board of Veterinary Medicine, the Virginia Real Estate Board, the Virginia Board of for Cosmetology, the Virginia Board of Psychology, the Board of Optometry, and the Virginia Board of Social Work, authorized at any time to conduct examinations of applicants for admission to practice or pursue any profession, vocation, trade, calling or art shall file a copy of each examination within a period of ten days after it is given with the Secretary of the Commonwealth ; where it . The examination shall be lodged and preserved for a period of at least one year as a public record accessible to any person desiring to examine it during usual business hours. However, if the same examination is also given outside of the Commonwealth of Virginia, a copy of such the examination need not be filed until ten days after the date on which it was last given anywhere.

A copy of the examinations given by the Board of Medicine, the Virginia State Board of Dentistry, the State Board for Contractors, the State Board of for Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, the Board of Veterinary Medicine, the Virginia Real Estate Board, the Virginia Board of for Cosmetology, the Virginia Board of Psychology , the Board of Optometry, and the Virginia Board of Social Work, and the essay portion of the examination given by the State Board of Bar Examiners, shall be filed with the secretaries of such boards or commissions respectively, within ten days after the giving of the examination ; which is given. The examination shall be accessible to any candidate who took the examination or his authorized representative. After the expiration of one year from the time of

the filing of each copy the examination is filed, the Secretary secretary of the Commonwealth respective board may withdraw and destroy it the examination .

Drafting Note: The Board of Optometry was added at the request of the Director of the Department of Health Regulatory Boards. There was no other change in the law.

§ 54.1-102. § 54-1.1. ~~Fraud in Unlawful procurement of certificate, license or permit ; unauthorized possession of examination or answers; penalty .-~~ A. It shall be unlawful:

(1) 1. For any person fraudulently to procure, or assist another to procure, *through theft, fraud or other illegal means*, a certificate, license or permit, from any ~~State~~ *state* board, or other body ; charged by law with the *duty responsibility* of examining persons desiring to engage in or practice a *regulated* business or profession for which a certificate, license or permit is required by law from such board or body , by giving to, or receiving from, any person any information, oral, written or printed, during the ~~conduct~~ *administration* of such the examination, which is intended to, or will, assist any person taking such the examination in passing the examination and ~~procuring~~ *obtaining* the required certificate, license or permit;

(2) 2. For any person, other than a member or officer of such the board or body, to procure or have in his possession prior to the beginning of such an examination, without written authority of some a member or officer of such the board or body, any copy or copies of the questions, or any of them, *question* intended to be used by such the board or body conducting such the examination, or to receive or furnish to any person taking such the examination, prior to or during such the examination, any written or printed memorandum or information, *material* purporting to be answers to, or aid in answering such questions;

(3) 3. For any person to attempt to fraudulently procure , *through theft, fraud or other illegal means*, any copy or copies of the questions ; or any of them, intended to be used by such the board or body conducting such the examination, or the answers to such the questions or any of them ; and the

4. To promise or offer of any valuable or other consideration to a person having access to such the questions or answers ; as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any such questions or answers ; or any of them, shall be deemed an attempt under this section .

If such an examination be is divided into separate parts, each of such the parts shall be deemed an examination within the meaning for the purposes of this section.

§ 54-1.2. ~~Penalty for violation of preceding section. -~~ B. Any person violating the provisions of the preceding section (~~§ 54-1.1~~) subsection A shall be guilty of a Class 2 misdemeanor ; and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment in jail for not more than 30 days, or both, in the discretion of the court .

Drafting Note: This section combines §§ 54-1.1 and 54-1.2. The penalty for violations regarding illegal procurement of licenses, certificates, permits, examination questions or answers was increased and designated as a Class 2 misdemeanor.

§ 54.1-103. *Additional training of regulated persons; reciprocity.-* A. The regulatory boards within the Department of Commerce and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

Drafting Note: This section was added. The provisions of Subsection B is found in paragraph 10 of current § 54-1.28 pertaining to the regulatory boards within the Department of Commerce.

§ 54.1-104. § 54-1.2:1. *Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.-* If The Department of Commerce and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by law statute or regulation ; and such check, money order or similar instrument which is not honored by the bank or financial institution named , the Department may, . The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address ; suspend any license, certificate, registration, or authority it has issued pursuant thereto . Upon notification of suspension, the person shall have reinstated such may reinstate the license, certificate, or registration or authority upon payment of the fee and penalties required under law or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

§ 54.1-105. *Majority required to suspend or revoke license, certificate or registration; imposition of sanctions.* – An affirmative vote of a majority of those serving on a board who are qualified to vote shall be required for any action to suspend or revoke a license, certification or registration or to impose a sanction on a licensee. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

Drafting Note: This section was added at the direction of the Virginia Code Commission.

§ 54.1-106. ~~§ 54-1.2:2.~~ Health care professionals rendering services at free certain clinics exempt from liability.—No person who is licensed pursuant to Chapters 4.01 (§ 54-83.1:5 et seq.), 8 (§ 54-146 et seq.), 8.1 (§ 54-200.1 et seq.), 12 (§ 54-273 et seq.), 13.1 (§ 54-367.1 et seq.), 14 (§ 54-368 et seq.), 14.1 (§ 54-398.1 et seq.), 15.1 (§ 54-524.1 et seq.), 15.2 (§ 54-524.110 et seq.) or Chapter 28 (§ 54-923 et seq.) of this title by the Boards of/for Audiology and Speech Pathology, Dentistry, Medicine, Nursing, Optometry, Opticians, Pharmacy, Hearing Aid Specialists, Psychology, Social Work or Professional Counselors who renders any health care services within the limits of his license voluntarily and without compensation to any person at any clinic where no charges are made for any health care services furnished at such clinic which is organized in whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless such the act or omission was the result of such the licensee's gross negligence or willful misconduct.

Drafting Note: Specifies the licensing board instead of the chapter. No change in the law.

§ 54.1-107. ~~§ 54-1.18:1.~~ Appointments, terms and removals and limitations of terms of members of regulatory boards ; citizen members .—All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.1-43 of the Code of Virginia. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board. ~~Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in § 2.1-43 B of the Code of Virginia. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. No member shall serve more than two successive full terms on any regulatory board. This~~

~~The provisions of this section shall not apply to the State Board of Commissioners to Examine for Branch Pilots.~~

Drafting Note: No change in the law. Section 2.1-43 will be amended to add absenteeism as a reason a board member could be removed from office.

§ 54.1-108. ~~§ 54-1.41.~~ Disclosure of official records.—Official records of the Department of Commerce or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) , except for the following:

1. Examination questions, papers, booklets and answer sheets , which may be disclosed at the discretion of the board administering or causing to be administered such examinations.

2. Applications for admission to examinations or for licensure , and the scoring records maintained by any board or by the Department Departments on individual licensees or applicants ; ~~except that such~~ . However, this material may be made available during normal working hours for copying ; at his expense, by the subject individual who is subject thereof at his expense at the office of the Department or the offices of any board ; ~~whichever of these may have possession of which possesses~~ the material.

3. Records of active investigations being conducted by the Department Departments or any board.

Drafting Note: Includes the Department of Health Professions; otherwise there is no change

in the law.

~~§ 54.1-109. § 54-1.10. Appeals and reviews~~ *Reviews and appeals* .—Any person who has been aggrieved by any action of the ~~Board~~ *Department of Commerce, Department of Health Professions, Board of Commerce, Board of Health Professions* or any regulatory board *within the Departments* shall be entitled to ~~all requests for reviews a review of such action and appeals action.~~ *Appeals from such actions as are provided shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) .*

Drafting Note: No change in the law.

~~§ 54.1-110. § 54-1.37.~~ Presiding officer; participation of board in hearing; disqualification of board member.—A. Every hearing in a contested case shall be presided over by a hearing officer in accordance with the provisions of the Administrative Process Act. The *regulatory board itself* shall determine whether the hearing officer is to hear the case alone or whether the board ~~itself~~ is to hear the case with the hearing officer.

B. A board member shall ~~voluntarily~~ disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by ~~filing an affidavit ; prior to the taking of evidence at a hearing,~~ stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. ~~The issue shall be determined by the hearing officer remaining members of the board shall determine whether the individual should be disqualified .~~

Drafting Note: Provides that the remaining members of the board, instead of a hearing officer, will determine the issue of disqualification of board members who do not withdraw from cases and removes requirement to file affidavit prior to the taking of evidence. Otherwise, there is no change in the law.

~~§ 54.1-111. § 54-1.20.~~ Unlawful acts; prosecution; proceedings in equity.—A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation ; ~~for the practice of which a license is required by law or rule of a regulatory board,~~ without holding ~~the requisite~~ a valid license *as required by statute or regulation* .

2. Making use of any designation provided by ~~law statute or rule regulation~~ to denote a standard of professional or occupational competence without being duly certified or licensed by ~~the appropriate regulatory board~~ .

3. Making use of any ~~title titles~~ , words, letters or abbreviations which may reasonably be confused with a designation provided by ~~law statute or rule regulation~~ to denote a standard of professional or occupational competence without being duly certified or licensed by ~~the appropriate regulatory board~~ .

4. Performing any act or function ; ~~the performance of which is restricted by law statute or rule regulation to those persons holding a professional or occupational license or certification,~~ without being duly certified or licensed by ~~the appropriate regulatory board or failing to register as a practitioner of a profession or occupation as required by law or rule~~ .

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

~~5. 6.~~ Materially misrepresenting facts in an application for ~~licensing licensure~~ , certification or registration.

~~6. 7.~~ Willfully refusing to furnish a regulatory board information ~~of or~~ records required or requested pursuant to ~~law statute or rule regulation~~ .

~~7. 8.~~ Violating any ~~law statute or regulation~~ governing the practice of any profession or occupation regulated pursuant to this title.

Any person ; ~~partnership, corporation or other entity~~ who *willfully* engages in any unlawful act enumerated in this section shall be guilty of a Class ~~3~~ *1* misdemeanor. *The third or any subsequent conviction for violating this section during a thirty-six-month period shall constitute a Class 6 felony.*

It shall be the duty of the attorney for the Commonwealth of the jurisdiction in which such act occurs or is engaged in to prosecute the same.

B. In addition to the provisions of subsection A of this section ~~or any other existing remedy at law~~, the Department of Commerce or the Department of Health Professions may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth at the relation of by the appropriate Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides. ~~The Commonwealth at the relation of the Department shall not be compelled to allege or prove that an adequate remedy at law does not exist.~~

Drafting Note: The penalty for violating subsection A was increased from a Class 3 to a Class 1 misdemeanor. A majority of the chapters which provide penalties for violations of the chapters specify the misdemeanor as Class 1. Subsection B currently pertains to the Department of Commerce, but has been amended to include the Department of Health Professions.

§ 54.1-112. Copies of records as evidence.—Copies of all records, documents and other papers of the Department of Commerce and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

Drafting Note: New section added.

§ 54.1-113. ~~§ 54.1-28.1~~ Regulatory boards to adjust fees.—Following the close of any biennium, when the account for any regulatory board within the Department of Commerce or the Department of Health Professions maintained under § 54.1-42 § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or ~~licensing licensure~~ and renewal thereof so that such the fees shall be are sufficient but not excessive to cover the expenses provided by § 54.1-10 (d). The provisions of this section shall be exempt from the provisions of the Administrative Process Act (§9-6.14:1 et seq.).

Drafting Note: References to the Department of Health Professions boards were added at the direction of the Code Commission. The exemption from the Administrative Process Act was added at the request of the Director of the Department of Commerce. Otherwise, there is no change in the law. Section 9-6.14:4.1 of the Administrative Process Act will be amended accordingly.

§ 54.1-114. ~~54.1-2.3~~ Biennial report.—The State Board of Bar Examiners, the Department of Commerce and the Department of Health Regulatory Boards Professions shall submit a biennial report reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the State Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The biennial report shall be distributed in accordance with the provisions of § 2.1-467.

Drafting Note: No change in the law.

SUBTITLE II.

PROFESSIONS AND OCCUPATIONS REGULATED BY THE DEPARTMENT OF COMMERCE AND BOARDS WITHIN THE DEPARTMENT.

CHAPTER 2.

GENERAL PROVISIONS.

§ 54.1-200. ~~§ 54.1-27~~ Composition of regulatory boards.—A regulatory board established to administer a system of certification or ~~licensing licensure~~ as provided in §§ 54.1-25 54.1-311 and 54.1-26 54.1-312, unless otherwise specified by law, shall be consist of such size, not to be fewer than at least five, as the members. The Board of Commerce may determine recommend to the General Assembly the number of members to be placed on the regulatory board. Two members of each such board established hereafter shall be citizen members and the remainder of the members shall be practitioners of the profession or occupation which is being regulated. Citizen members shall participate in all matters except decisions regarding the examination of applicants for licensure or decisions regarding the professional competence of licensees. Terms of the members shall be staggered to ensure a continuing body. All appointments to and removals from

regulatory boards shall be made by the Governor.

Drafting Note: Clarifies that the General Assembly and not the Board of Commerce determines the number of members on a regulatory board. Also clarifies that only new boards are required to have citizen members. The sentence stricken duplicates a provision in proposed § 54.1-107.

§ 54.1-201. ~~§ 54-1-28.~~ Powers and duties of regulatory boards.—The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or ~~licensing~~ licensure by any such board, provided that all ~~such~~ qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

2. To examine, or cause to be examined, the qualifications of each applicant for certification or ~~licensing~~ licensure within its particular regulatory system to ~~include including when necessary the~~ preparation, administration and grading of examinations.

3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.

4. To levy and collect fees for certification or ~~licensing~~ licensure and renewal thereof that are sufficient to cover all expenses for the administration and operation of ~~both the regulatory board and a proportionate share of the expenses of the Department of Commerce and the Board of Commerce~~ .

5. To promulgate ~~rules and regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)~~ necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by ~~such the regulatory board and~~ . *The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title*

6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by ~~such the regulatory board~~ to ensure that ~~such the~~ practitioner is conducting his practice in a competent manner and within the lawful ~~rules and~~ regulations promulgated by ~~such the~~ board.

7. To revoke, suspend or fail to renew a certificate or license ~~which it has authority to issue~~ for just causes as ~~are enumerated in appropriate rules and regulations of any such the~~ board.

8. To receive complaints concerning the conduct of any person whose activities are regulated by the ~~Board regulatory board~~ and to take appropriate disciplinary action if warranted.

9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

10. To ~~establish agreements with other jurisdictions for the recognition of certificates and licenses issued by such other jurisdictions to the extent deemed appropriate by such board.~~

The General Assembly reserves the right to review and modify, in whole or in part, any rule or regulation promulgated by any regulatory board.

Drafting Note: Paragraph 10 is now found in proposed § 54.1-103. There was no other change in the law.

§ 54.1-202. ~~§ 54-1-22.~~ Monetary penalty.—Any person licensed or certified by a regulatory board who violates any ~~provision of law statute~~ or regulation pertaining to that regulatory board ~~; an~~ who is not criminally prosecuted ~~;~~ shall be subject to the monetary penalty provided in this section. If it ~~shall have been determined by a regulatory board determines~~ that a respondent is guilty of the violation complained of, ~~that the board shall proceed to determine the amount of the monetary penalty for such the violation, which shall not exceed the sum of \$1,000 for each violation. Such~~ The penalty may be sued for and recovered in the name of the Commonwealth.

Drafting Note: No change in the law.

§ 54.1-203. ~~§ 54-1-22:1.~~ Recovery of cost after grant of formal fact-finding.— If, after the ~~conduct of~~ After a formal fact-finding pursuant to § 9-6.14:12 ~~;~~ wherein a sanction is imposed to fine, or to suspend, revoke or deny renewal of any license, certificate or registration, ~~and unless the board or the Department is of the opinion that the act complained of was inadvertent or done in a good faith belief that such act did not constitute a violation of a law, rule or~~

regulation, the regulatory board or the Department where it has final authority to grant such license, certificate or registration may assess the holder thereof the cost for of conducting such fact-finding when the board or Department has final authority to grant such license, certificate or registration, unless the board or Department determines that the offense was inadvertent or done in a good faith belief that such act did not violate a statute or regulation. Such The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings.

Drafting Note: No change in the law.

§ 54.1-204. § 54-1.21. Prior convictions not to abridge rights.— Notwithstanding any other provision of law, a A person shall not be refused a permit, license, certificate or registration or certificate by a regulatory board to practice, pursue, or engage in any regulated occupation ; trade, vocation, or profession or business for which a permit, license, registration or certificate is required by the State solely by reason because of a prior criminal conviction of a crime , unless such the criminal conviction directly relates to the trade, occupation or profession for which the permit, license, certificate or registration or certificate is sought. Such However, the regulatory board shall ; however, have the authority in its discretion to refuse a permit, license, certificate or registration or certificate ; if , based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant [is] unfit or unsuited to engage in such occupation ; trade, vocation, or profession or business .

Drafting Note: The reference to the issuance of a permit was deleted since it appears the boards license, certify or register regulated persons. Otherwise, there is no change in the law.

CHAPTER 3.

DEPARTMENT OF COMMERCE.

§ 54.1-300. § 54-1.18. Definitions.— As used in this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise requires a different meaning :

“Board” means the Board of Commerce.

“Certification” means the process whereby the Department or any regulatory board on behalf of the Commonwealth issues a certificate on behalf of the Commonwealth to any a person certifying that he has possesses the character and minimum skills properly to engage properly in his profession or occupation and that it knows of no character defect that would make him a bad practitioner of the same .

“Board” means Virginia Board of Commerce.

“Department” means the Department of Commerce.

“Director” means the Director of the Department of Commerce.

“Inspection” means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession in order to ascertain if the practitioner involved is carrying out his profession or occupation in a fashion manner consistent with the public health, safety ; health and welfare.

“ Licensing Licensure” means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of the a profession or occupation licensed which is unlawful to practice without the issuance of a license.

“Registration” means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

“Regulatory board” means the (i) State Board of for Accountancy, (ii) State Board of for Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, (iii) Virginia Athletic Board, (iv) Virginia Board of Examiners for Audiologists and Speech Pathology, (v) (iv) Board of Barber Examiners for Barbers , (v through (x) [Repealed.] (xi) (v) State Board for Contractors, (xii) (vi) Board of for Commercial Driver Training Schools, (xiii) (vii) Virginia Board of for Cosmetology, (xiv) (viii) Virginia Board of for Hearing Aid Dealers and Fitters Specialists , (xv) (ix) State Board for the Certification of Librarians, (xvi) State Board of Examiners for Nursing Home Administrators, (xvii) (x) Virginia State Board of for Opticians, (xviii) (xi) State Board of Commissioners to Examine for Branch Pilots, (xix) (xii) Virginia Real

Estate Board, ~~(xx)~~ [Repealed.] ~~(xxi)~~ (xiii) Board for the Certification of Water Waterworks and Wastewater Works Operators, ~~(xxii)~~ (xiv) Virginia Board of for Geology and ~~(xxiii)~~ , (xv) Virginia Auctioneers Board and (xvi) Board for Professional Soil Scientists .

Drafting Note: The names of the regulatory boards were standardized by changing "of" to "for" and by removing references to "Virginia" and "State." The Board of Examiners for Audiology and Speech Pathology and the Board of Examiners for Nursing Home Administrators were transferred to the Department of Health Professions. References to "Examiners" and "Certification" were removed to be consistent with changes the Code Commission made to boards within the Department of Health Professions. The boards within the definition of "regulatory boards" will be alphabetized in the title revision bill. The definition of "licensure" was clarified. Otherwise, there was no change in the law.

§ 54.1-301. § 54-1-30. Department continued ; ; appointment of Director.— ~~There The Department of Commerce within the executive branch is hereby continued in the executive department the Department of Commerce .~~ The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with his own ~~that of the Governor~~ .

Drafting Note: No change in the law.

§ 54.1-302. § 54-1-31. Supervision of Department. — The Director of the Department of Commerce shall ; ~~under the direction and control of the Governor,~~ be responsible for the supervision of the Department ~~under the direction and control of the Governor~~ and shall exercise such other powers and perform such other duties as ~~may be required of him~~ by the Governor ~~requires~~ .

Drafting Note: No change in the law.

§ 54.1-303. § 54-1-32. General powers of Director.— The Director shall have the following general powers:

1. To employ such personnel as ~~may be required and assistance necessary for the operation of the Department and to carry out~~ the purposes of this chapter.

2. To make and enter into all contracts and agreements necessary or incidental to the performance of ~~its~~ *the duties of the Department* and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, ~~and~~ agencies and governmental subdivisions of the Commonwealth.

3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

4. To do all acts necessary or convenient to carry out the purposes of this ~~chapter~~ *subtitle* .

Drafting Note: No change in the law.

§ 54.1-304. § 54-1-33. Powers and duties of the Director with respect to regulatory boards.— Each of the regulatory boards ~~named in this chapter~~ *within the Department* shall be a separate board ~~within the Department~~ . All of the administrative functions of the *regulatory* boards designated in this section shall be under the direction and supervision of the Director ; ~~and it shall be the duty of the members of several regulatory boards designated in this chapter to cooperate with the Director to the end that his powers of direction and supervision of the administrative functions of each board shall not be impaired~~ .

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

~~(i)~~ *be* 1. Be the secretary of each board;

~~(ii)~~ *maintain* 2. Maintain all records for each board;

~~(iii)~~ *collect* 3. Collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards and Department shall be paid;

~~(iv)~~ [Repealed];

~~(v)~~ employ such personnel and assistance as may be required for the operation of the Department;

~~(vi)~~ 4. Enforce all laws statutes and regulations the Director is required to administer;

~~(vii)~~ 5. Exercise such other powers as may be necessary to function as the sole administrative officer of each of such boards; and

~~(viii)~~ such 6. Perform any additional administrative functions as may be prescribed by the Board.

Drafting Note: Subdivision (v) was stricken since it repeats a provision in proposed § 54.1-303 and the subsequent subdivisions were renumbered. There was no change in the law.

§ 54.1-305. ~~§ 54-1.34.~~ Bond of Director.— ~~The Director shall,~~ Before entering upon the discharge of his duties, ~~the Director shall~~ give bond payable to the Commonwealth of Virginia ; ~~conditioned upon the faithful discharge of his duties in a form approved by the Attorney General, in such penalty as shall be fixed ; from time to time,~~ by the Governor, with some a surety or guaranty company authorized to do business in this State as security ~~conditioned upon the faithful discharge of his duties; Commonwealth.~~ The premium required for said ~~the~~ bond shall be paid out of the administrative fund appropriated to said ~~the~~ Department, and the bond shall be filed with and preserved by the Comptroller.

Drafting Note: No change in the law.

§ 54.1-306. ~~§ 54-1.39.~~ Enforcement of laws by Director or investigators; authority of investigators appointed by Director.— The Director or investigators appointed by him shall be sworn to enforce ~~the statutes and regulations pertaining to the Department and regulatory boards~~ and shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce.

All investigators appointed by the Director are vested with the authority to administer oaths or affirmations ~~for the purpose of receiving complaints of violations of this subtitle~~ , serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under ~~the~~ authority of the Director and ~~to~~ request and receive criminal history information under the provisions of § 19.2-389.

Drafting Note: No change in the law.

§ 54.1-307. ~~§ 54-1.40.~~ Subpoenas.—In addition to the authority granted in § 9-6.14:13 to issue a subpoena ~~subpoenas~~ and the right to issue subpoenas granted the several ~~agencies regulatory boards~~ within the Department of Commerce , the Director or a designated subordinate shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business, for the issuance of a subpoena *duces tecum* in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or a regulatory board to request production ~~relevant to such complaint~~ of any *relevant* records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the Department. The said court shall be authorized to issue and compel compliance with such a subpoena upon a showing of reasonable cause. ~~The court may, upon~~ Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, ~~the court may~~ issue a subpoena *duces tecum* requiring the ~~forthwith~~ immediate production of evidence. ~~This section shall apply mutatis mutandis to the Director of the Department of Health Regulatory Boards and his designee .~~

Drafting Note: The Department of Health Professions has a separate statute pertaining to subpoenas, so the reference to that Department has been deleted here. Otherwise, there is no change in the law.

§ 54.1-308. ~~§ 54-1.42.~~ Departmental expenses.— The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and ~~such compensation shall be charged to the accounts of the respective boards ; and in furtherance of the accomplishment of this function .~~ The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board.

Drafting Note: No change in the law.

§ 54-1.35. Clerks of courts required to report convictions to Department.— It shall be the duty of the clerk of the circuit court wherein any conviction is had of a criminal violation of any statute which the Department is empowered to enforce to report the same to the Department, which shall thereupon annul any certificate or license held by the person so convicted or enjoined.

Drafting Note: This section was repealed after the Virginia Code Commission decided to repeal a similar statute in the general provisions of the Department of Health Professions.

§ 54.1-309. ~~§ 54-1.23.~~ Creation of Board of Commerce; members, terms, chairman ; *meetings* .

~~There is hereby created shall be a Board of Commerce within the Department of Commerce , the Board of Commerce . The Board shall consist of nine members appointed by the Governor, subject to confirmation by the General Assembly. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. Initial appointments to the Board shall be made as follows: one shall be for a term of one year, two shall be for terms of two years, two shall be for terms of three years, and four shall be for terms of four years each, and thereafter all appointments shall be for terms of four years each. The chairman of the Board shall be elected annually by the Board annually .~~

§ 54-1.24. Meetings of Board. - The Board shall meet at least once every three months, and on the call of the chairman , when in his opinion *he deems* additional meetings are necessary.

Drafting Note: Current § 54-1.24, pertaining to meetings of the Board of Commerce, was merged into this section. There was no change in the law.

§ 54-1.310. § 54-1.25. Powers and duties of Board.- A. The Board shall have the following powers and duties , and such others as may be provided by law :

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to the regulation of professions and occupations.
5. ~~From time to time make such rules and Promulgate~~ regulations as may be in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) necessary to carry out its responsibilities.
6. ~~The Board shall~~ Evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated by other provisions of this title within the criteria established in this chapter for consideration of as to whether or not each such profession or occupation should be regulated and, if so, the degree of regulation that should be imposed. Whenever it determines that the public interest requires that a profession or occupation which is not then regulated by law should be regulated, the Board shall recommend to the General Assembly next convened for approval a regulatory system accompanied by comprehensive rules and regulations necessary to conduct the degree of regulation required.

B. Upon the regulation of a profession or occupation as hereinabove set forth in subsection A , the Board shall have the following powers and duties: *power and duty*

1. ~~To to~~ promulgate supplemental rules and regulations necessary to effectuate the purposes and intent of this chapter : *and*
2. ~~To to~~ establish regulatory boards to administer the system of regulation , rules and the regulations that the Board recommended by the Board and approved by the General Assembly approved .
3. [Repealed.]

The General Assembly reserves the right to review and modify, in whole or in part, any rule or regulation promulgated by the Board.

Drafting Note: No change in the law.

§ 54-1.311. § 54-1.26. Degrees of regulation.- A. Whenever the Board determines that a particular profession or occupation should be regulated, or that a different degree of regulation should be imposed on such a regulated profession or occupation not otherwise regulated by law , it shall consider the following degrees of regulation in the order that they appear below provided in subdivisions 1 through 5 . The Board shall regulate only within to the degree , or degrees , of regulation that it finds necessary to fulfill the need of for regulation and only upon approval by the General Assembly.

1. Private civil actions and criminal prosecutions. - Whenever the Board finds that existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to

eradicate existing harm or prevent potential harm, ~~it the Board~~ may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.

2. Inspection and injunction. - Whenever ~~the Board finds that~~ current inspection and injunction procedures are not sufficient to eradicate existing harm, ~~it the Board~~ may promulgate ~~rules regulations~~ consistent with the intent of this chapter to ~~impose provide~~ more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being ; ~~it . The Board may consider recommending recommend to an the~~ appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant to ~~an the~~ appropriate ~~State state~~ agency the power to ~~impose provide~~ sufficient inspection and injunction procedures.

3. Registration. - Whenever ~~the Board finds~~ it is necessary to determine the impact ~~sustained by the public from~~ of the operation of a profession or occupation ~~on the public~~ , ~~it the Board~~ may implement a system of registration.

4. Certification. - Whenever the public interest might well be protected by the Board's granting a designation of professional competence in order that persons may have ~~When the public requires~~ a substantial basis for relying on the ~~professional services of a practitioner, then~~ ~~it the Board~~ may implement a system of certification.

5. Licensing. - Whenever it is ~~apparent to the Board that~~ adequate regulation cannot be achieved by ~~other means other~~ than licensing, ~~it the Board~~ may establish licensing procedures for any particular profession or occupation.

B. In determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner , ~~if unregulated,~~ performs a service for individuals involving a hazard to the public health, safety or welfare ; ~~if unregulated~~ .

2. The ~~view opinion~~ of a substantial portion of the people who do not practice the particular profession, trade or occupation ~~on the need for regulation~~ .

3. The number of states which have regulatory provisions similar to those proposed.

4. Whether there is sufficient demand for the service for which there is no ~~regulated~~ substitute ~~not likewise regulated~~ and this service is required by a substantial portion of the population.

5. Whether the profession ; ~~trade~~ or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession ; ~~trade~~ or occupation, as evidenced by established and published codes of ethics.

6. Whether the profession ; ~~trade~~ or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

7. Whether the professional ; ~~trade~~ or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession ; ~~trade~~ or occupation.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

9. Whether the characteristics of the profession ; ~~trade~~ or occupation make it impractical or impossible to prohibit those practices of the profession ; ~~trade~~ or occupation which are detrimental to the public health, safety and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Drafting Note: No change in the law.

CHAPTER 4.

**ARCHITECTS, ENGINEERS, SURVEYORS AND
LANDSCAPE ARCHITECTS.**

§ 54.1-400. § 54-17.1. Definitions.— The following terms, as used in this chapter, shall have the meaning given in this section unless the context requires a different meaning :

(1) (a) "Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as *and whose competence has been attested by his licensing the Board through licensure as an architect.*

(b) "Practice The "practice of architecture" shall mean *means any service wherein the principles and methods of architecture are applied, such as consultation, investigation, evaluation, planning, and design, including and includes the responsible administration of construction contracts, in connection with any private or public buildings, structures or projects, or the related equipment thereof, or the accessories thereto .*

(2) (a) "Professional engineer" shall be deemed to mean a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience; and who has complied with the requirements for licensing as determined by the Board.

(b) The "practice of engineering" shall mean any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. It shall not include the service or maintenance of existing electrical or mechanical systems.

(3) (a) The "practice of land surveying" includes surveying of areas for their determination or correction, for their description, for the establishment or reestablishment of internal and external land boundaries, or for the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

(b) In addition to the work described above, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. It is further provided that the work included in this paragraph shall involve the use and application of standards prescribed by local or state authorities, and also provided the land surveyor passes an examination given by the Board in addition to that provided for the licensing of land surveyor under paragraph (a) above; however, any land surveyor previously licensed pursuant to this paragraph may continue to do the work herein described without further examination.

Nothing contained in paragraphs (a) and (b) except as therein provided shall be construed to include engineering design and the preparation of plans and specifications for construction.

(c) "Land surveyor" shall mean a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, as attested by the issuance to said person of a license as land surveyor.

"Board" means the Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects.

(4) (a) "Certified landscape architect" shall mean *means a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by*

professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through certification as a landscape architect.

(b) The "practice of landscape architecture" by a certified landscape architect shall mean means any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.

Resulting plans and specifications, submitted under the seal, stamp or certification of a certified landscape architect, may be accepted by local and state authorities, in connection with both public and private projects; however, no landscape architect, unless he shall also hold an appropriate license as a land surveyor, shall provide boundary surveys, plats or descriptions for any purpose, except in conjunction with or under the supervision of an appropriately licensed professional who shall provide certification, as required.

(c) Nothing contained in paragraphs (a) and (b) above shall be construed to restrict or otherwise affect the right of any nurseryman, uncertified landscape architect, landscape designer, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist or any other similar person from engaging in such occupation, or from rendering any service in connection therewith that is not otherwise proscribed; however, no person may hold himself out as, or use the title of, "certified landscape architect," unless he has been so certified pursuant to the provisions hereof.

(5) "Improvements to real property" means any valuable addition or amelioration made to land and generally whatever is erected on or affixed to land which is intended to enhance its value, beauty or utility, or adapt it to new or further purposes. Examples of improvements to real property include, but are not limited to, structures, buildings, machinery, equipment, electrical systems, mechanical systems, roads, and water and waste water treatment and distribution systems.

"Land surveyor" means a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the Board through licensure as a land surveyor.

The "practice of land surveying" includes surveying of areas for a determination or correction, a description, the establishment or reestablishment of internal and external land boundaries, or the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer.

The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.

Drafting Note: Several terms were reorganized to place them in alphabetical order. Some provisions, which were inappropriate for a definitional section, were placed in separate sections.

§ 54.1-401. § 54-37. Exemptions from provisions of chapter .- The following shall be exempted from the provisions of this chapter:

(1) 1. Practice of professional engineering and land surveying by a licensed architect when such practice is incidental to what may be properly considered an architectural undertaking.

(2) 2. Practice of architecture and land surveying by a licensed professional engineer when

such practice is incidental to an engineering project.

~~(3) [Repealed.]~~

~~(4) 3. Practice as a professional engineer, architect, land surveyor or certified landscape architect in this State Commonwealth by any person not a resident of and having no established place of business in this State Commonwealth , or by any person resident in this State Commonwealth whose arrival is recent ; , provided ; however, that such person shall have filed is legally qualified for such professional service in another state or country and files within fifteen days after commencement of such practice an application , with the required fee, for licensure as a professional engineer, architect or land surveyor or certification as a landscape architect ; and that such person is legally qualified for such professional service in his own state or country, and shall have paid the required fee . Such The exemption shall continue for only such reasonable time as until the Board requires in which has had sufficient time to consider the application and grant or deny the application for licensure or certification.~~

~~(5) 4. Engaging in the practice of professional engineering as an employee under a licensed professional engineer, engaging in the practice of architecture as an employee under a licensed architect, or engaging in the practice of land surveying as an employee under a licensed land surveyor; provided, that such practice may shall not include responsible charge of design or supervision.~~

~~(6) 5. Practice of professional engineering, architecture or land surveying solely as an employee of the United States ; provided, however, that . However, the employee shall not be exempt from other provisions of this chapter if such employee he furnishes advisory service for compensation to the public in connection with engineering, architectural or land surveying matters ; he shall not be exempt from other provisions of this chapter .~~

~~(7) 6. Practice of professional engineering, architecture or land surveying as a regular full-time, salaried employee of this State Commonwealth or any political subdivision thereof; provided that such person does not furnish advisory service for compensation to the public or as an independent contracting party in this State Commonwealth or any political subdivision thereof in connection with engineering, architectural or land surveying matters.~~

~~(8) 7. Practice of architecture or professional engineering by an individual, firm or corporation on property owned or leased by such individual, firm or corporation, unless the same involves the public health or safety is involved .~~

~~(9) 8. Practice of engineering solely as an employee of a corporation engaged in interstate commerce, or as an employee of a public service corporation, by rendering such corporation engineering service in connection with its facilities which are subject to regulation by the State Corporation Commission; provided, that such corporation employees as who furnish advisory service to the public in connection with engineering matters other than in connection with such employment shall not be exempt from the provisions of this chapter.~~

Drafting Note: No change in the law.

~~§ 54.1-402. § 54-37.1. Exemptions Further exemptions from license requirements for architects and professional engineers .— A. Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including subsequent amendments thereto.~~

~~B. A. No license as an architect or professional engineer shall be required pursuant to § 54-26.1 § 54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or design bears designs bear the name and address of the author and his occupation:~~

~~1. Single- and two-family homes, townhouses and multi-family dwellings, excluding electrical and mechanical systems, not exceeding 2 1/2 stories or forty feet in height; or~~

~~2. All farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals or poultry; or~~

~~3. Buildings and structures classified with respect to use as business (Use Group B) and mercantile (Use Group M), as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 5,000 square feet in total net floor area, 3 stories, or 40 feet in height; or~~

4. Buildings and structures classified with respect to use as factory and industrial (Use Group F) and storage (Use Group S) as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 15,000 square feet in total net floor area, 3 stories, or 40 feet in height; or

5. Additions, remodeling or interior design without a change in occupancy or occupancy load and without modification to the structural system or a change in access or exit patterns or increase in fire hazard; or

6. Electric installations which comply with all applicable codes and which do not exceed 600 volts and 800 amps, where work is designed and performed under the direct supervision of a person licensed as a master's level electrician or Class A electrical contractor by written examination, and where such installation is not contained in any structure exceeding 2 1/2 stories or 40 feet in height or located in any of the following categories:

- a. Use Group A-1 theaters which exceed assembly of 100 persons;
- b. Use Group A-4 except churches;
- c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or

7. Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of cataloged standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300° F (150° C) where such work is designed and performed under the direct supervision of a person licensed as a master's level plumber, master's level heating, air conditioning and ventilating worker, or Class A contractor in those specialties by written examination. In addition, such installation may not be contained in any structure exceeding 2 1/2 stories or forty feet in height or located in any structure which is defined as to its use in any of the following categories:

- a. Use Group A-1 theaters which exceed assembly of 100 persons;
- b. Use Group A-4 except churches;
- c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or

8. The preparation of shop drawings, field drawings and specifications for components by a contractor who will supervise the installation and where the shop drawings and specifications (i) will be reviewed by the licensed professional engineer or architect responsible for the project or (ii) are otherwise exempted; or

9. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and for conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia.

C. B. No person shall be exempt from licensure as an architect or engineer who engages in the preparation of plans, specifications, documents or designs for:

1. Any unique design of structural elements for floors, walls, roofs or foundations; or
2. Any building or structure classified with respect to its use as high hazard (Use Group H).

C. *Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including any subsequent amendments.*

Drafting Note: No change in the law. Proposed subsection C was formerly subsection A. Subsection B was changed to Subsection A and Subsection C was changed to Subsection B.

~~§ 54.1-403. § 54-18.1. Board continued and redesignated members and officers; quorum .— The State Board of Architects, Professional Engineers and Land Surveyors is continued and shall hereafter be known as the State Board of for Architects, Professional Engineers, Land Surveyors~~

and Certified Landscape Architects .

~~§ 54-10. Qualifications and terms of members. (1) The Board shall be composed of eleven members as follows: three architects, three professional engineers, three land surveyors and two certified landscape architects. Board members shall have actively practiced or taught their professions for at least ten years before prior to their appointments. Other than that of the certified landscape architect appointed for a four-year term ending June 30, 1984, the The terms of Board members shall be five years.~~

~~(2) to (4) [Repealed.]~~

~~§ 54-22. Officers of Board. The Board shall elect a president from its membership a president , and shall elect a secretary .~~

~~§ 54-23. Quorum. A quorum of the Board shall consist of not less than two engineer, two architect, two land surveyor and one certified landscape architect members. Seven Board members, consisting of two engineers, two architects, two land surveyors and one certified landscape architect, shall constitute a quorum.~~

Drafting Note: Current §§ 54-18.1, 54-19, 54-22 and 54-23 were consolidated into one section pertaining to the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects. Since the Director of the Department of Commerce is secretary to the regulatory boards, reference to election of a secretary has been deleted. The name of the Board was changed at the direction of the Virginia Code Commission.

~~§ 54.1-404. § 54-25. Rules and regulations Regulations ; code of professional practice and conduct.—The Board shall promulgate rules and regulations not inconsistent with this chapter governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.~~

~~Such rules and The regulations may include a code of professional practice and conduct, the provisions of which shall serve any or all of the following purposes:~~

- ~~(1) 1. The protection of the public health, safety and welfare;~~
- ~~(2) 2. The maintenance of standards of objectivity, truthfulness and reliability in public statements by professionals;~~
- ~~(3) 3. The avoidance by professionals of conflicts of interest interests ;~~
- ~~(4) 4. The prohibition of solicitation or acceptance of work by professionals on any basis other than their qualifications for the work offered;~~
- ~~(5) 5. The restriction by the professional in the conduct of his professional activity from association with any person engaging in illegal or dishonest activities; or~~
- ~~(6) 6. The limitation of professional service to the area of competence of each professional.~~

Drafting Note: No change in the law.

~~§ 54.1-405. § 54-26. Examinations and issuance of licenses and certificates .— The Board shall hold at least one examination each year ; in the City of Richmond or at such other place or places as the Board may designate ; at such times as it may prescribe by general rule or special order at times and locations designated by the Board . It shall issue a A license or certificate to practice as a licensed professional engineer, a licensed an architect, or a licensed land surveyor , or a certified certificate to practice as a landscape architect in this State shall be issued to every applicant who shall have complied complies with the requirements of this chapter and the rules regulations of the Board ; which . The licenses or certificates shall be signed by at least four members of the Board.~~

~~Any person with at least eight years' combined education and experience as a landscape architect or any person with a degree in landscape architecture from an institution of higher education approved by the Board may take the examination for certification as a landscape architect ; provided that a degree in landscape architecture from an institution of higher education approved by the Board shall be deemed the equivalent thereof and to provide all educational and experience requirements to take the exam .~~

Drafting Note: No change in the law.

~~§ 54-26.2. Waiver of examination. In the case of applications for certification as a landscape architect which are made with the Board within six months after the effective date of the initial rules and regulations of the Board, the Board shall waive the examination requirement and accept in lieu thereof satisfactory evidence that the applicant holds a degree in landscape architecture or a comparable degree from an approved institution of higher learning and has held himself out to the public and has been practicing as a landscape architect since July 1, 1977.~~

Drafting Note: Current § 54-26.2 has been repealed because it pertained to applications for certification as a landscape architect which were made with the Board within six months of the effective date of the initial regulations of the Board. It is therefore obsolete.

~~§ 54.1-406. § 54-26.1. License required.—A. In order Unless exempted by §§ 54.1-401 or 54.1-402, a person shall hold a valid license prior to engage engaging in the practice of architecture or engineering which practice includes design, consultation, evaluation or analysis and involves proposed or existing improvements to real property ; a person shall hold a valid license unless included within the exemptions to this chapter .~~

~~In order Unless exempted by § 54.1-401, a person shall hold a valid license prior to engage engaging in the practice of land surveying ; a person shall hold a valid license unless included within the exemptions to this chapter .~~

~~B. Any Except as authorized in § 54.1-402, any person, partnership, corporation or other entity offering to practice architecture, engineering, or land surveying ; except as authorized in § 54-37.1, without being registered or licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54-1.20 § 54.1-111 of the Code of Virginia this title .~~

~~C. Any person, partnership, corporation or other entity which is not authorized to practice in accordance with this chapter and which uses the words “architecture,” “engineering” or “land surveying” or any modification or derivative thereof in its name or description of its business activity in a manner to indicate that indicates or imply implies that it practices or offers to practice architecture, engineering or land surveying as defined in this chapter shall be subject to the provisions of § 54-1.20 of the Code of Virginia § 54.1-111 .~~

Drafting Note: No change in the law.

~~§ 54.1-407. § 54-25.1. Land surveying.—Notwithstanding the provisions of any regulation promulgated by the Board of for Architects, Professional Engineers, Land Surveyors and Certified Landscape Architects, a land surveyor shall not be required by Board regulations to set corner monumentation or perform a boundary survey on any property when (i) corner monumentation has been set or is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.1-465 or subdivision (g) of subsection A of § 15.1-466, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty, or (ii) the purpose of the survey is to determine the location of the physical improvements on the said property only, if the prospective mortgagor or legal agent ordering the survey agrees in writing that such corner monumentation shall not be provided in connection with any such physical improvements survey. The provisions of this section shall apply only to property located within the Counties of Arlington, Fairfax, Loudoun, Prince William, Spotsylvania and Stafford; and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park.~~

Drafting Note: No change in the law.

~~§ 54.1-408. Practice of land surveying; subdivisions.—In addition to the work defined in § 54.1-400, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. The work included in this section shall involve the use and application of standards prescribed by local or state authorities. The land surveyor shall pass an examination given by the Board in addition to that required for the licensing of land surveyors as defined in § 54.1-400. Any land surveyor previously licensed pursuant to subdivision (3)(b) of former § 54-17.1 may continue to do the work herein described without further examination.~~

~~Except as provided, nothing contained herein or in the definition of “practice of land surveying” in § 54.1-400 shall be construed to include engineering design and the preparation of plans and specifications for construction.~~

Drafting Note: This provision was contained in the definitional section of the chapter. Since it seemed to go beyond a "definition," the provision was placed in a separate section.

§ 54.1-409. *Landscape architecture.*— *Resulting plans and specifications, submitted under the seal, stamp or certification of a certified landscape architect, may be accepted by local and state authorities, in connection with both public and private projects. However, no landscape architect, unless he is also licensed as a land surveyor, shall provide boundary surveys, plats or descriptions for any purpose, except in conjunction with or under the supervision of an appropriately licensed professional, who shall provide certification, as required.*

Nothing contained herein or in the definition of "practice of landscape architecture" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any nurseryman, uncertified landscape architect, landscape designer, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist or any other similar person from engaging in such occupation, or from rendering any service in connection therewith that is not otherwise proscribed. No person shall hold himself out as, or use the title of, "certified landscape architect," unless he has been certified pursuant to the provisions of this chapter.

Drafting Note: This provision was contained in the definitional section of the chapter. It was placed in a separate section since the provisions appeared to go beyond the scope of a "definition."

§ 54.1-410. § 54-37.2. *Other building laws not affected; duties of public officials.*— A. Nothing contained in this chapter or *in the regulations of the Board shall be construed to limit the authority of any public official authorized by law to approve plans, specifications or calculations in connection with improvements to real property. This shall include, but shall not be limited to, the authority of officials of local building departments as defined in § 36-97 (10), to require pursuant to the Uniform Statewide Building Code, state or local statutes or , local ordinances , or code requirements that such work be prepared by a person licensed or certified pursuant to this chapter.*

B. Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer, land surveyor or landscape architect licensed, certified or authorized pursuant to § 54-17.1 or by this chapter in any case in which the exemptions contained in § 54-37 or § 54-37.1 § 54.1-401 or § 54.1-402 are not applicable.

Drafting Note: No change in the law.

§ 54.1-411. § 54-37.3. *Organization for practice; registration.*—A. Nothing contained in this chapter or *in the regulations of the Board shall prohibit the practice of architecture, engineering, land surveying or the offering of the title of certified landscape architecture by any corporation, partnership, sole proprietorship or other entity provided such practice or certification is rendered through its officers, principals or employees who are correspondingly appropriately licensed or certified. No such organization shall limit the liability of any licensee or certificate holder from for damages arising from his acts or limit such corporation, partnership, sole proprietorship or other entity from liability for acts of its employees or agents. No such corporation, partnership, sole proprietorship, or other entity, or any affiliate thereof, shall, on its behalf or on behalf of any such licensee or certificate holder, be prohibited from (i) purchasing or maintaining insurance against any such liability; (ii) entering into any indemnification agreement with respect to any such liability; or (iii) receiving indemnification as a result of any such liability.*

B. Except for professional corporations holding a certificate of authority issued in accordance with § 13.1-549 and sole proprietorships that do not employ other individuals for which licensing is required, any person, corporation, partnership or other entity offering or rendering the practice of architecture, engineering, land surveying or offering the title of certified landscape architecture shall register with the Board. As a condition of registration, the entity shall name at least one correspondingly licensed architect, professional engineer, land surveyor or certified landscape architect for such profession offered or rendered. The person or persons named shall be responsible and have control of the regulated services rendered by the entity.

C. The Board shall adopt regulations governing the registration of persons, corporations, partnerships, sole proprietors and other entities as required in subsections A and B which:

1. Provide for procedural requirements to obtain and renew registration on a periodic basis;
2. Establish fees for the application and renewal of such registration sufficient to cover costs;

3. Assure that regulated services are rendered and controlled by persons authorized to do so; and

4. Ensure that conflicts of interest *interests* are disclosed.

Drafting Note: No change in the law.

~~§ 54-41. Prosecution of violations.—Upon receiving reports, together with proper evidence, from the Board, that the provisions of this chapter have been violated, the attorneys for the Commonwealth of the counties or cities in which it is claimed such violations occurred shall institute and conduct the proper proceedings in the appropriate court to prosecute and punish such alleged offenders in violation of the provisions of this chapter.~~

Drafting Note: This section can be deleted since it duplicates proposed § 54.1-111.

~~§ 54-38. License tax.—Nothing in this chapter shall be construed to exempt any professional engineer, architect or land surveyor from the payment of any license tax imposed by existing law.~~

Drafting Note: This section will be deleted. The other professions do not have this provision and there does not seem to be any confusion with payment of a license tax.

CHAPTER 5.

ASBESTOS CONTRACTORS AND WORKERS.

~~§ 54.1-500. §54-145.4.~~ Definitions.—As used in this chapter , unless the context requires a different meaning:

“Asbestos” means any material containing more than one percent asbestos by weight, which is friable or which has a reasonable probability of becoming friable in the course of ordinary or anticipated building use.

“Asbestos contractor’s license” means an authorization issued by the Department permitting a person to enter into contracts for a project to remove or encapsulate asbestos.

“Asbestos project” means an activity involving the inspection for, removal or encapsulation of asbestos.

“Asbestos worker’s license” means an authorization issued by the Department permitting an individual to work on an asbestos project.

“Commissioner” means the Commissioner of Labor and Industry.

“Department” means the Department of Commerce.

“Director” means the Director of the Department of Commerce.

“Friable” means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit fibers into the air.

“Person” means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

Drafting Note: No change in the law.

~~§ 54.1-501. §54-145.5.~~ Powers and duties of the Department of Commerce and Department of Labor and Industry; Director; annual inspection.—A. The Department of Commerce shall administer and enforce this chapter. The Director has the power and duty to:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) to include but not be limited to the prescription of fees and procedures for the issuance and renewal of licenses; and

2. Approve the training courses administered to licensure applicants and develop an examination and grading system for testing applicants.

B. At least once a year, during an actual asbestos project, the Department of Labor and

Industry shall conduct an on-site inspection of each licensed asbestos contractor's procedures in regard to removing and encapsulating asbestos. The Commissioner or an authorized representative shall have the power and authority to enter at reasonable times upon any property for this purpose.

Drafting Note: No change in the law.

§ 54.1-502. § 54-145.6. Plan for issuance of licenses; interdepartmental implementation plan.—A. The Director shall implement a plan for the issuance of asbestos contractor's and worker's licenses by July 1, 1988.

B. The Director, in conjunction with the Departments of General Services, Health, Labor and Industry, and Education and the State Air Pollution Control Board, shall develop a plan for the implementation of this chapter which specifies the duties of each agency.

Drafting Note: No change in the law.

§ 54.1-503. § 54-145.7. Asbestos contractor's license required.—After July 1, 1988, it shall be unlawful for any person who does not have an asbestos contractor's license to contract with another person, for compensation, to remove or encapsulate asbestos.

Drafting Note: No change in the law.

§ 54.1-504. § 54-145.8. Asbestos worker's license required.—After July 1, 1988, it shall be unlawful for an individual who does not have an asbestos worker's license to work on an asbestos project.

Drafting Note: No change in the law.

§ 54.1-505. § 54-145.9. Qualification for an asbestos contractor's license.—To qualify for an asbestos contractor's license, an applicant shall:

1. Ensure that each of his employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos worker; and

2. Demonstrate to the satisfaction of the Director that the applicant and his employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor and Industry, and the State Air Pollution Control Board covering any part of an asbestos project.

Drafting Note: No change in the law.

§ 54.1-506. § 54-145.10. Application for an asbestos contractor's license.—A. An applicant for an asbestos contractor's license shall submit an application to the Department on the required form and shall pay the *prescribed* fee ~~prescribed by the Department~~.

B. The Director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Reasonable notice of denial and an opportunity for reapplication shall be afforded to all applicants.

Drafting Note: No change in the law.

§ 54.1-507. § 54-145.10:1. Duties of licensed asbestos contractors.—A. A licensed asbestos contractor shall notify the Department of Labor and Industry at least twenty days prior to commencement of each asbestos project he plans to undertake. Notification shall be sent by certified mail or hand-delivered to the Department of Labor and Industry. The Department of Labor and Industry shall have the authority to waive all or any part of the twenty-day notice.

B. A licensed asbestos contractor shall keep a record of each asbestos project it performs and shall make the record available to the Departments of Commerce and of Labor and Industry upon request. Records required by this section shall be kept for at least thirty years. The records shall include:

1. The name, address, and asbestos worker's license number of the individual who supervised the asbestos project and each employee or agent who worked on the project;

2. The location and a description of the project and the amount of asbestos material that was removed;

3. The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and state standards; and

4. The name and address of each asbestos disposal site where waste containing asbestos was

deposited and the disposal site receipts.

Drafting Note: No change in the law.

~~§ 54.1-508. § 54-145.10:2.~~ Qualification and application for an asbestos worker's license.—A. To qualify for an asbestos worker's license an individual shall successfully complete all requirements established by this chapter and all regulations promulgated pursuant to ~~§ 54-145:5~~ *this chapter* .

B. Applications for licensure shall be submitted to the Department on the required form and shall be accompanied by the prescribed fee.

C. The Director may deny a license if there has been a failure to comply with the application procedures or if the applicant fails to satisfy the application criteria. Reasonable notice of such denial and an opportunity for reapplication shall be afforded to all applicants.

Drafting Note: No change in the law.

~~§ 54.1-509. § 54-145.10:3.~~ Expiration and renewal of licenses.—Asbestos contractor's and asbestos worker's licenses shall be governed as to expiration and renewal by the provisions of this chapter and regulations promulgated pursuant to ~~§ 54-145.5~~ *this chapter* .

Drafting Note: No change in the law.

~~§ 54-145.10:4. § 54.1-510.~~ Renewal of asbestos worker's license.—To renew an asbestos worker's license, the licensee must successfully complete all requirements established by regulations promulgated pursuant to this chapter.

Drafting Note: No change in the law.

~~§ 54.1-511. § 54-145.10:5.~~ Time period for applying for licensure.—Any person required to be licensed as an asbestos contractor or asbestos worker shall submit an application for licensure as required by this chapter or the regulations adopted hereunder.

Drafting Note: No change in the law.

~~§ 54.1-512. § 54-145.10:6.~~ Exemptions from licensure.—In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the Director may waive the requirement for asbestos contractor's and worker's licenses. The Director may also exempt from licensure any employer and any employees of such employer, but only with respect to an asbestos project on premises owned or leased by such employer, if he determines that the employer has adopted and is enforcing an asbestos safety program adequate to protect the health and safety of such employees and of any other persons who are or may be affected by such project. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Director hereunder.

Drafting Note: No change in the law.

~~§ 54.1-513. § 54-145.10:7.~~ Approval of asbestos courses.—A person or organization may apply for Department approval of a course on the health and safety aspects of asbestos demolition, removal, and encapsulation by submitting a full description of the curriculum and a written application on forms prescribed by the Department.

Drafting Note: No change in the law.

~~§ 54.1-514. § 54-145.10:8.~~ Acceptance of bids by state agencies and political subdivisions.—A state agency or a political subdivision shall not accept a bid in connection with an asbestos project from a person who does not hold an asbestos contractor's license at the time the bid is submitted.

Drafting Note: No change in the law.

~~§ 54.1-515. § 54-145.10:9.~~ Employer discrimination; penalty.—Any employer who discriminates against or otherwise penalizes an employee who complains to or cooperates with the Department of Commerce or any other governmental agency in administering this chapter is subject to the penalties in ~~§ 54-145.10:11~~ ~~§ 54.1-517~~ .

Drafting Note: No change in the law.

~~§ 54.1-516. § 54-145.10:10.~~ Disciplinary actions against licensees.—A. The Director, in conjunction with the Commissioner, may reprimand, suspend or revoke the license of an asbestos contractor or worker if the licensee:

1. Fraudulently or deceptively obtains or attempts to obtain a license;
2. Fails at any time to meet the qualifications for a license or to comply with the

requirements of this chapter or any regulation adopted by the Director; or

3. Fails to meet any applicable federal or state standard for removal or encapsulation of asbestos.

B. The Director may reprimand, suspend or revoke the license of any asbestos contractor who employs or permits an individual without an asbestos worker's license to work on an asbestos project.

C. The Director or the Commissioner, or both, shall investigate all alleged violations reported to the Department. Hearings regarding violations of this chapter shall be conducted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

~~§ 54.1-517. § 54-145.10:11.~~ Penalties for willful violations.—Notwithstanding any other provision of law, any person who willfully violates any provision of this chapter or any regulation related to licensure, certification ~~and or~~ training adopted pursuant to this chapter shall be guilty of a Class 3 misdemeanor for the first two violations and a Class 1 misdemeanor for a third and each subsequent violation within a three-year period.

In addition, licensed asbestos contractors and licensed asbestos workers may be assessed a civil penalty by the Director of not more than \$1,000 for an initial violation and \$5,000 for each subsequent violation within a three-year period arising from a willful violation of standards established by the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Labor and Industry, State Air Pollution Control Board and the Department of Waste Management in a three-year period.

Drafting Note: No change in the law.

CHAPTER 6.

AUCTIONEERS.

~~§ 54-824.1. Title. This chapter shall be known and may be cited as the Virginia Auctioneers' Registration and Certification Act.~~

Drafting Note: This section, which provides that the chapter may be cited as the Virginia Auctioneers' Registration and Certification Act, is repealed.

~~§ 54.1-600. § 54-824.2.~~ Definitions.— As used in this chapter *unless the context requires a different meaning* :

“Auction” means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or most favorable offer.

“Auctioneer” means any person who conducts or offers to conduct an auction.

“Auction firm” means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.

“Board” means the ~~Virginia~~ Auctioneers Board.

“Certified Virginia Auctioneer” means any registered auctioneer who meets the requirements for certification as prescribed by the Board.

“Director” means the Director of the Department of Commerce.

“Goods” means any chattels, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale.

“Person” means any natural person, association, partnership, or corporation, and ~~shall also include~~ *the* officers, directors, and employees of a corporation.

“Registered auctioneer” means any person who registers as an auctioneer with the Board.

Drafting Note: No change in the law.

~~§ 54.1-601. § 54-824.3. Exemptions.—~~ The provisions of this chapter and the terms “Certified Virginia Auctioneer,” “registered auctioneer” or “auction firm,” as defined above ~~in § 54.1-600~~ , shall not apply to ~~and shall not include~~ :

1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;

2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, administrator, or executor, or any person acting under order of a court;

3. A trustee acting under a trust agreement, deed of trust, or will;

~~3a.~~ 4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;

4. 5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;

~~5.~~ 6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;

~~6.~~ 7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;

7. 8. Sale at auction of automobiles conducted under the provisions of § 43-34 or by a motor vehicle dealer licensed under the provisions of Chapter 7 (§ 46.1-515 et seq.) of Title 46.1;

8. 9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;

9. 10. Sales conducted by and on behalf of any charitable, religious, fraternal, or political organization if the person conducting the sale receives no compensation therefor;

10. 11. Sales, not exceeding one sale per year, conducted by or on behalf of a civic club or organization; or

11. 12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1 through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

Drafting Note: No change in the law.

~~§ 54.1-602. § 54-824.4. Auctioneers Board; powers; appointment membership, meetings and powers. — There shall be an A. The Auctioneers Board shall be composed of five members who shall have powers and responsibilities as set forth in this chapter. The Governor shall appoint the members of the Board, of which as follows: three shall be certified auctioneers and two shall be citizen members ; however, the three auctioneers initially appointed to serve on the Board shall be qualified for certification . A citizen member of the Board shall be a person meeting the qualifications as set forth in § 54-1.18-1. Of the initial five members of the Board, one shall be appointed for a one-year term, two for two-year terms and two for three-year terms. Any vacancy shall be filled only for the remainder of the unexpired term. Each member shall continue in office until his successor is appointed and qualified.~~

The Governor may remove any member of the Board for misconduct, incompetency, or willful neglect of duty.

~~§ 54-824.7. Meetings of the Board. The Board shall meet at least twice each year for the purpose of transacting such business as properly may come before it . Special meetings of the Board may be held at such times and under such circumstances as the discretion of the Director may require .~~

~~§ 54-824.9:3. Power of Board. A. B. The Board shall have the following authority and responsibility with respect to this chapter responsibilities :~~

1. Establish regulations to obtain and retain registration and certification.

2. Make all case decisions regarding eligibility for initial registration, and certification and renewal thereof.

3. To fine, suspend, deny renewal or revoke for causes *cause*, as defined in regulation, of any registration or certification.

4. To examine auctioneers for certification.

B. The Board may enter into reciprocal agreements with other states that establish standards consistent with this chapter or regulations promulgated hereunder by which such other states permit residents of Virginia to engage in the acts of an auctioneer, in return for which the Board may extend similar privileges in Virginia to residents of such other states.

Drafting Note: Current §§ 54-824.4, 54-824.7 and 54-824.9:3 have been combined into one section. Provisions pertaining to the appointive and dismissal powers of the Governor were deleted because they duplicate provisions found in proposed § 54.1-107. The Board's power to enter into reciprocal agreements with other states duplicates proposed § 54.1-103. Language pertaining to the initial appointments to the Board in 1983 is obsolete and has been removed.

§ 54.1-603. § 54-824.9-1. Registration required; requirements for registration ; *nonresident applicants* .— Effective six months after the adoption of initial rules by the Board **A.** Unless exempted by § 54.1-601, no person or firm shall sell at auction, unless exempt by § 54-824.3 of this article, without first being registered with the Board. In order to be registered any person or firm shall pay a fee and provide such information as may be required by regulation of the Board. No person applying for registration shall be required to pass a test or show evidence of training or experience.

Before such registration shall be operative there shall be filed with the Board evidence that such person *the applicant* is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Board, conditioned upon the faithful and honest conduct of his business or employment.

B. Nonresident applicants shall *also* file with the Board an irrevocable consent that service of process upon the Director of the Board is as valid and binding as service of process upon the applicant. If the applicant is a corporation, the consent shall be authenticated by the corporate seal. If the applicant is other than a corporation, the consent shall be authenticated by the acknowledged signature of the applicant or a member or officer of the applicant. All consents, except those from individuals, shall be accompanied by a certified copy of the resolution of the proper officers or managing board, authorizing the member or officer to execute the consent.

Duplicate copies of any service of process shall be served upon the Director of the Board. The *Any process or pleading served upon the Director of the Board* shall file one copy of the service of process be filed by the Director in his office and shall a copy thereof immediately send the other copy forwarded by registered mail to the main office of the applicant *auctioneer at the last known address* .

Drafting Note: Requires Director to mail a copy of the process or pleading and to file a copy. Removes requirement that duplicate copies be served. General law covers the stricken language in subsection B.

§ 54.1-604. § 54-824.9-2. Certification ; *nonresident certification* .— **A.** Any person registered as an auctioneer wishing to hold himself out as a Certified Virginia Auctioneer may apply to the Board and meet such *the* qualifications as may be established by regulation indicating minimum competency. Qualifications established by the Board shall be limited to those directly related to auctioneering as regulated by this chapter.

§ 54-824.17. Certification of nonresidents. **B.** A nonresident of this *the* Commonwealth may be certified as an auctioneer by meeting one of the following requirements: (i) conforming to the provisions of this chapter and regulations of the Board with reference to resident auctioneers; or (ii) ~~hold~~ holding a valid auctioneer license or certificate in another state with which reciprocity has been established by the Board.

Drafting Note: Current § 54-824.9:2 pertaining to certification, and § 54-824.17 relating to certification of nonresidents, were combined. Otherwise, there was no change in the law.

§ 54.1-605. § 54-824.15. Taxation of auctioneer.— **The** An auctioneer may not have a local license tax imposed by any county, city, or town except that in which his office is maintained. If a branch office is maintained elsewhere in Virginia, a local license tax may be imposed by the county, city or town in which the branch office is located, pursuant to § 58-266.4 §§ 58.1-3707 and 58.1-3709 .

Drafting Note: No change in the law.

§ 54.1-606. § 54-824.19. Unlawful to advertise as an auctioneer.—It shall be unlawful for any

person not registered under the provisions of this article *chapter* to advertise that he is in the auction business or to hold himself out to the public that he is an auctioneer.

Drafting Note: No change in the law.

§ 54-824.21. Penalty for violation of the provisions of this article. Any person convicted of violating the provisions of this article shall be guilty of a Class 3 misdemeanor.

Drafting Note: This section can be deleted since it duplicates provision in proposed § 54.1-111. The penalty has been raised from a Class 3 misdemeanor to a Class 1 misdemeanor.

CHAPTER 7.

BARBERS.

§ 54.1-700. § 54-83.2. Definitions.— The following words and phrases, when As used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where *unless* the context clearly indicates *requires* a different meaning :

(a)“Barbering” : - *Any means any* one or any combination of the following acts, when done on the human body for pay or reward and not for the treatment of disease, to wit, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. ~~Provided, however, the~~ *The* term “barbering” shall not apply to ~~such~~ *the* acts as described hereinabove when performed by any person in his home if such service is not offered to the public.

(b)“Barbershop” : - *Any means any* establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers. ~~Provided, however, any person engaged in the practice of barbering on or before July 1, 1966, in any establishment or place of business within which the practice of barbering was carried on by only one barber, shall be issued a license without examination, provided such person files an application with the Board on or before January 1, 1967.~~

(c)“Board” : - *The means the* Board of Barber Examiners for Barbers .

Drafting Note: No change in the law.

§ 54.1-701 § 54-83.5 . Exemptions from chapter .—The provisions of this chapter shall not be construed to apply to:

(a) 1. Persons authorized by the laws of this State *Commonwealth* to practice medicine and surgery or osteopathy or chiropractic;

(b) 2. Registered nurses ~~under the laws of~~ *licensed to practice in* this State *Commonwealth* ;

(c) Persons practicing beauty culture 3. *Cosmetologists* ;

(d) 4. Persons employed in State ~~state~~ or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers or barber instructors who practice only on inmates of or patients in such sanatoria or institutions; and

(e) Morticians and undertakers registered as such under the laws of 5. *Persons licensed as funeral directors or embalmers in* this State *Commonwealth* .

Drafting Note: No change in the law.

§ 54.1-702 § 54-83.22 . Board of Barber Examiners for Barbers membership, officers, quorum .—The Board of Barber Examiners is continued. It *for Barbers* shall ~~consist~~ *be composed* of five members, at least two of whom shall be licensed barbers who have followed the occupation of barbering for at least five years immediately prior to appointment. The terms of Board members shall be ~~three~~ *four* years. The Board shall license persons to practice and teach barbering.

No person otherwise qualified to be licensed as a barber or barber teacher shall be denied licensure solely for failure to produce a certificate from a licensed physician stating that such person is free from any infectious disease in a communicable state, nor shall such certificate be

required for the issuance of a renewal license as a barber or barber teacher, nor shall any person be denied admission to any school or college of barbering solely for failure to produce such a certificate.

The Board shall elect a chairman and a vice-chairman.

A majority of the Board in meeting duly assembled may perform and exercise all the duties and powers devolving upon the Board shall constitute a quorum .

Drafting Note: The terms of the Board members were changed from three years to four years at the request of the Board. Provisions pertaining to a health certificate were placed in another section. The name of the Board was changed at the direction of the Virginia Code Commission.

~~§ 54.1-703 § 54-83.22:1~~ . License required ; health certificate not necessary .— In order to No person shall engage in barbering ; it shall be necessary to hold without a requisite valid license issued by the Board .

No person otherwise qualified to be licensed as a barber or barber teacher shall be denied licensure solely for failure to produce a certificate from a licensed physician stating that he is free from any infectious disease in a communicable state. Nor shall a certificate be required for the issuance of a renewal license as a barber or barber teacher. No person shall be denied admission to any school or college of barbering solely for failure to produce such a certificate.

Drafting Note: The provisions pertaining to the health certificate were previously contained in the statute establishing the Board.

~~§ 54.1-704. § 54-83.22:2~~ . Temporary licenses.—The Board may issue a temporary license to engage in barbering to any person who is eligible for examination. Persons issued a temporary license shall be subject to the regulations of the Board.

The Board shall promulgate regulations consistent with this section to permit individuals to be granted temporary licenses for a specified period of time. ~~Such~~ The regulations shall provide for issuance of a temporary license only until the holder sits for the next examination for which he is eligible and the results reported.

Drafting Note: No change in the law.

~~§ 54.1-705 § 54-83.27~~ . Inspection of barbershops.—Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, shall inspect each barbershop in the State Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the executive secretary of the Board of Barber Examiners Director of the Department of Commerce for disciplinary action.

Drafting Note: No change in the law. The Director of the Department of Commerce serves as secretary of each board. See proposed § 54.1-304.

~~§ 54-83.24. Short title.—This chapter shall be known as the Virginia Barber Act.~~

Drafting Note: This section is not needed and will be repealed.

CHAPTER 8.

BOXING AND WRESTLING MATCHES.

Article 1.

General Provisions.

~~§ 54.1-800. § 9-46.1.~~ Definitions. As used in this chapter unless the context requires a different meaning :

“Board” means the Athletic Board.

“Boxer” means a person competing in the sport of boxing.

“Boxing” means the contact sport of attack or defense using fists or feet, including amateur or professional karate, kick boxing, boxing or any similar contest.

“Department” means the Department of Commerce.

“Director” means the Director of the Department of Commerce.

"Wrestler" means any person competing or participating as an opponent in wrestling.

"Wrestling" means any contact sport or exhibition in which individuals attempt to subdue or unbalance an opponent.

Drafting Note: No change in the law.

~~§ 54.1-801. § 9-16.2. Interference with or restraint of professional boxing or wrestling matches or exhibitions.— No~~ *Except as provided by this chapter, no person or persons, club, organization or corporation shall ; except in accordance with law, interfere with or restrain, or attempt to interfere with or restrain, by any act, threat or otherwise, either within or without this State, the putting on planning or the conduct conducting of any professional boxing or wrestling matches or exhibition exhibitions in this State Commonwealth by any act or threat either within or without the Commonwealth .*

Drafting Note: No change in the law.

~~§ 54.1-802. § 9-16.1. Power to conduct investigations; assistance of Attorney General.— The Director shall have the power to conduct investigations as to whether or not monopolies, combinations or other restraints circumstances exist to restrain matches or exhibitions of professional boxing or wrestling anywhere in this State and to this end may employ the powers set forth in § 9-20 of the Code Commonwealth . If the Director requires the assistance of the Attorney General and applies to him therefor, the The Attorney General may assist the Board in its investigations at the request of the Director . The Attorney General in the conduct of any such investigation shall be reimbursed from that portion of the funds of the Board appropriated to the State Commonwealth under the provisions of § 9-47 § 54.1-803 .~~

Drafting Note: No change in the law.

~~§ 54.1-803. § 9-47. Disposition of moneys collected.— All moneys collected by the Board pursuant to the provisions of this chapter shall be paid promptly into the state treasury and segregated as a special fund from which all expenses of the Board shall be paid. At the end of each fiscal year, one-half fourth of the balance in the special fund for such year shall be transferred by the Comptroller to the general fund of the state treasury , and one-fourth shall be distributed to the Virginia Sports Hall of Fame .~~

The remaining one-half of the balance shall be divided into a number of parts equal to the number of cities, counties and towns of the Commonwealth where moneys were collected during such fiscal year from contests held and resident licenses issued, each part to be in an amount proportional to the amount collected in each such city, county or town. Such proportional parts shall be distributed to the appropriate city, county and town by the State Treasurer, upon warrants of the Comptroller. ~~It is provided, however, that~~ *However, if less than \$400 of such funds were collected during such fiscal year in a city, county or town, the entire proportional part for it shall be transferred by the Comptroller to the general fund of the state treasury.*

Drafting Note: The editor's note for § 9-47 states: Item 116 of Acts 1984, c. 755, the appropriations act, provides: "Notwithstanding Section 9-47 of the Code of Virginia, a payment shall be made at the end of each fiscal year to the Virginia Sports Hall of Fame. The amount of said payment shall be one fourth of the special revenue balance. The payment to cities, counties and towns shall be one half of the revenue balance as provided in Section 9-47." Changes were made in this section consistent with the editor's note.

~~§ 54.1-804. § 9-48. Towns treated as separate from counties.— For the purpose of this chapter towns shall be treated and considered as being separate and apart from the counties in which located.~~

Drafting Note: No change in the law.

Article 2.

Athletic Board.

~~§ 54.1-805. § 9-16. Athletic Commission continued as Athletic Board membership ; powers and duties in general ; quorum .— The Virginia Athletic Commission within the Department of Commerce is continued and shall hereafter be known as the Virginia Athletic Board shall be composed of three members. The members shall serve for a term of five years. Two members of the Board shall constitute a quorum. The Board shall elect a chairman from its membership and adopt a seal for the Board .~~

The Board shall promulgate regulations governing wrestlers and boxers and boxing and wrestling contests, matches and exhibitions. The Board is vested with the powers and duties specified herein and all other powers necessary and proper to enable it to execute fully and effectually all the purposes of this chapter. As used in this chapter, the words "Board" or

“Commission” mean the Athletic Board, the word “Department” means the Department of Commerce, and the word

§ 9-17. **Members; quorum.** The Board shall be composed of three members to be appointed by the Governor for a term of five years each, to run from the expiration of the respective terms of the present members. Two members of the Board shall constitute a quorum for the exercise of the powers conferred upon it, and in case of a vacancy, the remaining members of the Board until such vacancy is filled.

§ 9-19. **Chairman; seal.** The members of the Board shall elect one of their number chairman of the Board and shall adopt a seal for the Board.

§ 9-46. **Rules and regulations governing contestants and matches.** The Board is empowered to prescribe and promulgate such rules and regulations as it may deem desirable, not in conflict with this chapter, governing wrestlers and boxers and boxing and wrestling contests, matches and exhibitions.

Drafting Note: Current §§ 9-16, 9-17, 9-19 and 9-46 were merged into one section. There was no change in the law.

§ 54.1-806. § 9-22. **Jurisdiction and control over matches and exhibitions.**— The Board shall have the sole direction, management and control of, and jurisdiction over, all wrestling, boxing and sparring matches and exhibitions to be conducted, held or given within the State Commonwealth by any club, corporation or association ; ~~and no such~~ . No matches or exhibitions shall be conducted, held or given within this State Commonwealth except pursuant to the authority ~~therefor granted by~~ of the Board and in accordance with the provisions of this chapter and the rules and regulations of the Board. The Board shall have power to limit the number of wrestling, sparring or boxing exhibitions to be held or given by any club, organization or corporation in any city or county ; ~~in this State~~, wherein such wrestling or boxing contests are conducted ~~in the manner herein provided~~ .

Drafting Note: No change in the law.

Article 3.

Licenses, Permits and Requirements for Matches.

§ 54.1-807. **Definitions.** — As used in this article unless the context requires a different meaning:

“Booking agent” means every person, firm, corporation, club, association or organization holding or exercising any of the privileges conferred by this chapter and undertaking, as independent contractor but not as producer, promotor or matchmaker, the negotiation or procurement of any contract to which it is not a party for any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

“Matchmaker” means every person, firm, corporation, club, association or organization holding or exercising any of the privileges conferred by this chapter and undertaking, as an independent contractor but not as producer or promotor, the procurement of the participants for any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

“Producer” means every person, firm, corporation, club, association or organization holding or exercising any of the privileges conferred by this chapter and conducting any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth in its own name and upon its own behalf.

“Promotor” means every person, firm, corporation, club, association or organization holding or exercising any of the privileges conferred by this chapter and who or which, as an independent contractor but not promoter, undertakes the general promotion, supervision and conduct of any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

Drafting Note: These definitions were moved from current § 9-29 to this new definitional section for Article 3. The definitions have not been changed.

§ 54.1-808. § 9-34. **Regulation of boxing or sparring exhibitions.**— Other than amateur exhibitions as provided in Article 4 (§ 54.1-819 et seq.) of this chapter, boxing or sparring exhibitions conducted in Virginia shall conform to the following requirements: (1) 1. No boxing or sparring exhibition shall be of more than fifteen rounds ~~duration rounds~~ , and no one round of such exhibition shall be permitted to extend for a longer period more than three minutes.

(2) 2. There shall be one minute intermission between each round.

~~(3) [Repealed.]~~

~~(4) 3. No contestants under the age of eighteen years shall be permitted to participate in any such professional boxing or sparring contest.~~

~~(5) 4. In boxing or sparring contests contestants shall break clean, and must not hold and hit. Butting with head or shoulder, wrestling or illegal use of elbows shall not be allowed. There shall be no unsportsmanlike conduct on the part of contestants. This shall include, including the use of abusive or insulting language.~~

~~(6) 5. The Board may, in its discretion, allow or provide for decisions upon contests or exhibitions held under this chapter to be made by the referee or by the referee and two judges or by three judges appointed by the Board for that purpose under such regulations as prescribed by the Board may prescribe.~~

~~(7) 6. The Board shall permit a total of forty-five rounds of professional boxing or sparring at any one time when requested by any licensed club, corporation or organization.~~

Drafting Note: Clarified that provisions of this section do not pertain to amateur exhibitions at the direction of the Virginia Code Commission.

~~§ 54.1-809. § 9-23. Issuance of license; qualifications of licensees; application of other provisions of chapter; hearings.~~ - The Board, at its discretion, may issue a license to promote, conduct or hold professional wrestling or boxing and sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

~~Before being granted Prior to the initial issuance of a license, or the renewal of such license thereof, the applicant must shall~~ establish to the satisfaction of the Board that he:

~~(1) 1. Is skilled, or has knowledge, in the profession of boxing and or wrestling generally.~~

~~(2) 2. Is of good moral character.~~

~~(3) Is physically fit and mentally sound.~~

~~(4) Has not been convicted of any felony or of any misdemeanor involving moral turpitude.~~

~~(5) 3. Will conduct his business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing and wrestling generally.~~

~~(6) 4. Will adhere to and comply with all the rules and Board regulations of the Board pertaining to such license.~~

In the case of a corporate applicant, these factors qualifications shall pertain to its officers, directors, and principal stockholders and employees.

Every license and licensee shall be subject to such rules and regulations, and amendments thereof, as the Board may prescribe.

Every license and licensee shall be subject to the provisions of § 9-42 of the Code of Virginia, and amendments thereof, and to the other provisions of this chapter.

Any hearings had under this section shall be in accordance with the procedure mutatis mutandis prescribed in Chapter 1.1-1 (§ 9-6.14-1 et seq.) of Title 9, of this Code.

Drafting Note: Subdivisions 3 and 4 were stricken at the direction of the Virginia Code Commission. The requirement that corporate employees meet the qualifications of a licensee was removed at the direction of the Code Commission. Provisions which were stricken in the last three paragraphs of this section are implicit.

~~§ 54.1-810. § 9-27. License prerequisite to exhibition; application and fee fees; local consent required in certain instances.~~ - A. No wrestling, boxing or sparring exhibition shall be conducted by any person or persons, corporation, association, club or organization except by unless a license has been issued to such person or persons, club or organization by the Board and a permit obtained from the Board pursuant to § 54.1-813. The application for such license licensure shall be in writing, and shall be addressed to the Board, and shall be verified by some an officer of the corporation, association, club, or organization or corporation or the person or one of the persons on whose behalf the application may be has been made. Clubs and organizations may conduct amateur matches and exhibitions upon the payment of the fee and

tax required by § 54.1-819.

~~Such~~ The application shall be accompanied by an annual fee, which shall be :

1. \$25 in cities ~~and~~ , counties ~~and~~ towns of not more than 5,000 inhabitants ~~and in towns of not less than 1,000 ;~~
2. \$50 in cities ~~and~~ , counties ~~and~~ towns of over 5,000 and not more than 50,000 inhabitants;
3. \$75 in cities and counties of over 50,000 and not more than 75,000 inhabitants;
4. \$125 in cities ~~and~~ counties of over 75,000 and not more than 150,000 inhabitants ; ; and
5. \$175 in all cities ~~and~~ counties of the State Commonwealth having a population of over 150,000 inhabitants.

Upon the payment of ~~such~~ the fee, the applicant shall be authorized to hold professional boxing or wrestling matches without the payment of any additional license fee in any form to any city, town or county.

~~§ 9-25. Local consent prerequisite to issuance of license. B. No license shall be issued by the Board to any club, person or persons , corporation or , association , club or organization to conduct wrestling, boxing or sparring exhibitions as herein provided for in any city or , county or any town of more than 1,000 inhabitants unless such city, county or town shall have has consented by ordinance or resolution by its council or other governing body to the conducting of such exhibitions in such city or county .~~

Drafting Note: Current §§ 9-27 and 9-25 were combined into one section. As of the 1980 census, there were 14 towns in Virginia with over 5,000 inhabitants. Appropriate changes were made in subdivisions 1 and 2 of subsection A to reflect this. "Counties" was added to subdivisions 4 and 5 of subsection A and the reference to "more than 1,000 inhabitants" was stricken in subsection B. Clarifies that only license fee required for amateur matches and exhibitions is that fee provided by proposed § 54.1-819.

~~§ 54.1-811. § 9-28. Bond required of licensee.-- Before any such a permit or license is granted to any person or persons, club, organization or corporation which shall have filed an application, as herein provided, to conduct professional wrestling or boxing matches, such the applicant shall execute a bond in such penalty as the Board may determine, with surety approved by the Board, conditioned for the payment of the taxes and penalties herein imposed by this chapter and for the fulfillment of contracts made with boxers and wrestlers in accordance with the regulations of the Board ; which . The bond shall be filed with the Board.~~

Drafting Note: No change in the law.

~~§ 54.1-812. § 9-38. Licenses for matchmakers, booking agents, referees, examining physicians, boxers, etc.; fees.-- The Board is authorized to may grant licenses upon application and the payment of the fees herein prescribed to matchmakers, booking agents or agencies or their representatives of booking agents or agencies , or to managers, referees, examining physicians, boxers, wrestlers, and seconds and trainers ; which licenses upon application and payment of required fees. Each license shall expire one year after the dates date on which it is issued ; respectively . The fees to be paid per annum shall be as follows:~~

~~matchmakers~~ 1. Matchmakers in cities and counties with a population of over 150,000, \$50;
~~matchmakers~~

2. Matchmakers in other counties, cities and towns, \$25;

~~booking~~ 3. Booking agents or agencies or representatives of booking agents or agencies, \$35;

~~managers~~ 4. Managers , \$15;

~~referees~~ 5. Referees , \$15;

~~examining~~ 6. Examining physicians, \$10;

~~boxers~~ 7. Boxers , \$10;

~~seconds~~ 8. Seconds and trainers, \$10;

~~wrestlers~~ 9. Wrestlers , \$10.

The Board may revoke any such license upon such cause as it shall deem *deems* sufficient.
Drafting Note: "Counties" was added to subdivision 1; otherwise, no change in the law.

§ 54.1-813. § 9-24. Sanction or permit from Board *required for exhibitions* .- No wrestling, boxing or sparring exhibition shall be conducted by any person ~~or persons~~, club, organization or corporation having a license *licensed* to conduct any such exhibitions in this State *Commonwealth* except by a sanction or permit from the Board.

Drafting Note: No change in the law.

§ 54.1-814. § 9-29. Reports by producers, promoters, etc.; taxes on receipts; proration of general admission charges.- For the purposes of this section, the following terms shall have the respective meanings herein defined:

The term "producer" shall mean every person, firm, corporation, club, association or organization who or which may hold or exercise any of the privileges conferred by this chapter and who or which undertakes to conduct any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth in his or its own name and upon his or its own behalf.

The term "promoter" shall mean every person, firm, corporation, club, association or organization who or which may hold or exercise any of the privileges conferred by this chapter and who or which, as an independent contractor but not promoter, undertakes the general promotion, supervision and conduct of any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

The term "matchmaker" shall mean every person, firm, corporation, club, association or organization who or which may hold or exercise any of the privileges conferred by this chapter and who or which undertakes, as an independent contractor but not as producer or promoter, to procure or provide the participants for any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

The term "booking agent" shall mean every person, firm, corporation, club, association who or which may hold or exercise any of the privileges conferred by this chapter and who or which undertakes, as independent contractor but not as producer, promoter or matchmaker, to negotiate or procure any contract to which he or it is not a party for any wrestling, sparring or boxing match, contest or exhibition in this Commonwealth.

A. Every producer shall, within twenty-four hours after the termination of every match, contest or exhibition, *shall* furnish to the Board a written *and verified* report, *duly verified* by the promoter or one of its officers, showing the number of tickets sold for such match, contest or exhibition, and the amount of gross proceeds thereof, and such other matters as the Board may prescribe; *and shall also within such time, . Within the same twenty-four-hour period, the producer shall* pay to the Board the tax as provided in § ~~9-29.1~~ § 54.1-815 based on its total gross receipts from the sale of tickets of admission to, and rights to broadcast by radio or television, such match, contest or exhibition.

B. Every promoter, matchmaker and booking agent shall, within twenty-four hours of the termination of every match, contest or exhibition, *shall* furnish to the Board a *verified* report, *duly verified* by such promoter, matchmaker or booking agent or one of its officers, showing the amount of the gross fee, charge, commission or other consideration received or to be received by such promoter, matchmaker or booking agent, and *also showing* such other matters as the Board may prescribe; *and shall also within such time . Within the same twenty-four-hour period the promoter, matchmaker or booking agent filing the report shall* pay to the Board the tax as provided in § ~~9-29.1~~ § 54.1-815 to the Board .

C. Whenever any wrestling, sparring or boxing match, contest or exhibition is conducted as a part of, or in conjunction with, any exhibition, presentation or activity for the whole of which there is a general admission charge, the Board shall determine what portion of such general admission charge, shall be subject to the tax imposed upon the producer by this section; *and whenever . Whenever* the compensation *for the services* of any promoter, matchmaker or booking agent *for his or its services is* in connection with any wrestling, sparring or boxing match, contest or exhibition *shall be and* combined with *his or its the* compensation for other services, the Board shall determine what portion of *such the* total compensation shall be subject to the tax imposed by this section.

Drafting Note: The terms defined in current § 9-29 were placed in a new § 54.1-807 at the beginning of Article 3. Otherwise, there is no change in the law.

§ 54.1-815. § ~~9-29.1~~. License and sanction of Board; reports of and tax on admission charges, etc., for showing of telecasts of boxing, sparring and wrestling matches, etc.- Every person, club,

corporation or association holding, showing or exhibiting a simultaneous telecast of any live boxing, sparring or wrestling match, exhibition or performance on a closed circuit telecast or subscription television viewed within this Commonwealth, whether originating in this Commonwealth or another state and for which an admission charge is made, shall obtain a license from the Board. The Board shall assess a charge of one dollar, for the license. In advance of each showing a sanction shall be obtained from the Board. Within twenty-four hours after the termination of such telecast, the person, club, corporation, or association showing the telecast shall furnish the Board a written and verified report showing the number of tickets sold for such telecast and the amount of the gross proceeds with such other information as the Board may prescribe. Within the same twenty-four-hour period, the person, club, corporation or association shall pay to the Board a tax of five percent of the first \$100,000; two and one-half percent of the second \$100,000; and one percent of the remainder of its total gross receipts from the sale of tickets of admission to, or moneys received from subscription for, the showing or exhibiting of the boxing, sparring or wrestling match, exhibition or performance.

Every owner or operator of any theater, arena or other place of public amusement who shows or exhibits a simultaneous telecast of any live, boxing, sparring or wrestling match, exhibition or performance, viewed within this Commonwealth, whether originating within this Commonwealth or another state, shall within twenty-four hours after the termination of such showing, pay to the Board a tax of five percent of the first \$100,000; two and one-half percent of the second \$100,000; and one percent of the remainder of the total gross receipts from the sale of tickets of admission to, or moneys received from subscription for, the showing or exhibiting of the boxing, sparring or wrestling match, exhibition or performance.

Drafting Note: No change in the law.

§ 54.1-816. § 9-30. Inspectors.— The Director shall appoint official representatives designated as “inspectors,” each of whom shall receive from the Director a card, authorizing him to act as such an inspector wherever the Director may designate him to act. The Board may, and at least one inspector shall, be present at all exhibitions and matches and to see that the rules are strictly observed; and an. An inspector shall also be present at the counting up of the gross receipts, and shall immediately mail to the Board the official box office statement received by him from the officers of the club.

Drafting Note: No change in the law. The duties of these inspectors differ from investigators the Director may appoint pursuant to proposed § 54.1-306.

§ 54.1-817. § 9-37. Physical examination of contestants.— Each *boxing* contestant ~~must shall~~, and other contestants may, be examined prior to entering the ring by a physician who has been licensed to practice in Virginia for ~~not less than at least~~ five years; ~~such~~. The physician ~~to shall~~ be appointed by the Director. The physician shall certify in writing, over his signature, as to the contestant's physical condition to engage in ~~such the~~ contest.

Drafting Note: Requires boxing contestants to be examined by a physician prior to a contest. However, discretionary language permits the physical examination of wrestling and sparring contestants.

§ 54.1-818. § 9-30. Referees to be residents of State Commonwealth.— All referees shall be ~~bona fide~~ residents of the State, ~~except that Commonwealth. However, in the discretion of the Board,~~ a nonresident referee may officiate for a single contest; ~~in the discretion of the Board~~.

Drafting Note: No change in the law.

Article 4.

Amateur Matches.

§ 54.1-819. § 9-35. Regulation of amateur exhibitions.— *Amateur matches conducted by clubs and organizations shall be in compliance with the provisions of subsection A of § 54.1-810 and § 54.1-813 pertaining to obtaining a license and a sanction from the Board. The matches shall also be subject to the regulations of the Board.* Any club or organization may hold or conduct strictly amateur wrestling, boxing and sparring matches and exhibitions on the payment of an annual license fee of one dollar; and shall also pay to the Board a. A tax of five per centum percent of its ~~the~~ total gross receipts from the sale of tickets of admission to ~~such the~~ amateur wrestling, boxing, or sparring matches or exhibitions; ~~upon the compliance and in accordance with all the provisions of § 9-27 with respect to obtaining a license and sanction from the Board and subject to all the rules and regulations of the Board shall also be paid to the Board~~. Amateur contests and exhibitions ~~within the meaning of~~, as used in this section are defined to, mean and include ~~only~~ contests or exhibitions in which the participants are bona fide amateurs and who receive no money, compensation or reward for their participation in any ~~such the~~ contest or exhibition; ~~except that~~. However, watches, medals, articles of jewelry, silverware, trophies or ornaments suitably inscribed to ~~show indicate~~ that it is given for participation in an

amateur boxing contest or exhibition, may be given, but the value of such article given to any contestant ~~must shall~~ not exceed the sum of ~~twenty-five dollars~~ \$100 . No other prize or award shall be given or awarded or accepted by any boxer unless authorized in writing by the Board.

No amateur boxing or sparring bout or match in any such exhibition or contest shall exceed three three-minute rounds with one minute intermission between each round. In any event no more than three rounds of amateur boxing are permissible.

The Board may accept membership in a recognized amateur athletic association as evidence of the amateur standing of any contestant, and in case of dispute, may determine upon any competent evidence the amateur status of any contestant.

Drafting Note: Value of articles given to participants in amateur contests was raised from \$25 to \$100. Otherwise, there was no change in the law.

~~§ 54.1-820. § 9-45. Amateur Certain school amateur matches held under certain auspices exempted.- Nothing in this This~~ chapter shall ~~not be construed~~ to apply to amateur wrestling, amateur boxing, or amateur sparring matches or exhibitions conducted by or held under the ~~auspices sponsorship~~ of any university, college, ~~normal elementary school~~ , or ~~high secondary school~~ of this State *Commonwealth* .

Drafting Note: No change in the law.

~~§ 54.1-821. § 9-45.1. Amateur matches held by Department of Corrections exempted .-~~ Amateur wrestling, boxing, or sparring matches or exhibitions between inmates held within state correctional institutions shall be exempt from the provisions of this chapter. The Department of Corrections shall adopt rules for the conduct of such matches to provide for the safety of participants.

Drafting Note: No change in the law.

Article 5.

Prohibitions and Violations.

~~§ 54.1-822. § 9-33. Betting or wagering prohibited .-~~ ~~No The licensed corporation, association, club or organization shall not permit any betting or wagering at any wrestling, boxing or sparring contests shall be permitted by any club or organization before, after, or during any such during or after the contest, in the building where such the contest is held ; or elsewhere .~~

Drafting Note: Added "corporation" and "association" to the list of entities which would not permit betting or wagering. Since it would be impossible for the sponsor of the contests to monitor betting or wagering "elsewhere," the reference to elsewhere has been removed.

~~§ 9-36. Admission of persons under eighteen.- No person under the age of eighteen years shall be admitted to a boxing or sparring exhibition, unless accompanied by his parent.~~

Drafting Note: This section repealed at the direction of the Virginia Code Commission.

~~§ 54.1-823. § 9-40. Forfeiture of exhibition licenses for sham matches.- Any person or persons , club, corporation or organization which shall conduct conducts , hold or give holds, gives or participate participates in any sham or fake wrestling, boxing or sparring match, shall thereby forfeit its license in accordance with the provisions of this chapter which shall thereupon be by the . The Board canceled and declared shall cancel and declare the license void; and it shall not the person, club, corporation or organization shall thereafter not be entitled to receive another.~~

Drafting Note: Removed wrestling and sparring matches from the provisions of this section.

~~§ 54.1-824. § 9-41. Penalty on contestants entering sham matches or violating regulations.- Any boxing contestant who shall participate participates in any sham or fake wrestling, boxing or sparring match or violate violates any rule or regulation of the Board shall be penalized in the following manner:~~

1. For the first offense he shall be restrained by order of the Board for a period of not less than two months nor more than one year in the discretion of the Board ; ~~such period to begin immediately after the occurrence of such offense, from participation in any boxing contest, match or exhibition to be held or given by any club or organization duly licensed to give or hold such contest, match or exhibition held in this Commonwealth, such period to begin immediately after the occurrence of the offense ; for~~

2. For a second offense, he shall be totally disqualified from further admission or participation in any *boxing* contest, match or exhibition held ~~or given by any club, corporation or association duly licensed for such purpose in this State, Commonwealth and in .~~

In addition thereto, for each such offense, *the contestant* shall forfeit such an amount determined by the Board, out of the from his share or purse agreed to be paid to such contestant for such the boxing or sparring or wrestling contest, match or exhibition as the Board shall determine, such. The forfeit to shall be paid into the Literary Fund of the Commonwealth. The Board, upon determining the amount of such forfeit, may pay the same out of any guarantee deposited with it for delivery to such contestant or may order the same paid to the Board by the club, corporation or association employing such the contestant out of the purse or share agreed by it to be paid such the contestant. The Board shall not determine or order any such forfeit except after due hearing thereon held upon reasonable notice duly served upon such the contestant or his manager and upon the club, corporation or association by whom he is employed; provided that any. Any member of the Board, the secretary or any inspector of the Board may order and require the club, corporation or association to hold the share or purse of such the contestant in its possession pending the hearing and determination of the Board.

Drafting Note: Removed wrestling and sparring matches from the provisions of this section.

§ 54.1-825. § 0-42. Suspension, revocation, etc., of licenses.— The Board shall have the additional authority and power to suspend, revoke or place on probation the license of any licensee licensed under this chapter, who in the discretion of the Board:

- (1) 1. Is guilty of failure to obey any lawful order of the Board, the executive secretary Director or any inspector thereof.
- (2) Is guilty of gross immorality.
- (3) Is unfit or incompetent by reason of negligence.
- (4) Is insolent or disrespectful to any member of the Board or representative thereof.
- (5) Is guilty of violating any provision of this chapter or rules and regulations of the Board.
- (6) Has committed fraud or deceit in securing a license for himself or another.
- (7) Has been convicted of a felony or misdemeanor involving moral turpitude in any jurisdiction within ten years preceding the suspension or revocation and such conviction not previously reported to the Board by said licensee.
- (8) Is an habitual drunkard or addicted to the use of narcotics.
- (9) Is or has become mentally incompetent.
- (10) Is or has been guilty of unprofessional or unethical conduct; or such conduct as to require a suspension or revocation of license in the interest of the public.
- (11) Has failed to furnish the proper party a copy of any contract or statement required by this chapter or the rules and regulations promulgated hereunder, or has breached such a contract.
- (12) Has loaned or permitted another person to use his license, or has borrowed or used the license of another.
- (13) Has failed to maintain in force the bond required by this chapter.
- (14) 2. Has by act or omission conducted himself in a manner which would tend to be detrimental to the best interests of boxing or wrestling generally, or to the public interest and general welfare.
- (15) Has been disciplined in any manner by the Athletic Board or similar agency or body of any jurisdiction.
- (16) Has failed to pay a fine or forfeiture imposed by this chapter.
- (17) Has, either within or without this State, by any act, threat, statement or otherwise, restrained, hindered, interfered with or prevented another promoter, club, association or booking agent, or has attempted, either within or without this State, in any such manner to restrain, hinder, interfere with or prevent another promoter, club, association or booking agent from presenting any professional boxing or wrestling match or exhibition within or without the State of Virginia.

(18) 3. Has, either within or without this State Commonwealth, engaged, directly or indirectly, in restraints or monopolies or taken any action tending to create or establish restraints or monopolies or conspired with others to restrain any person or persons from participating or competing in any professional boxing or wrestling match or exhibition for any promoter, club, association, corporation or booking agent.

4. Is guilty of violating any provision of this chapter or regulations of the Board.

(19) Any hearings had held under this section shall be in accordance with the procedure mutatis mutandis prescribed in §§ 9-6.10 through 9-6.14, inclusive, of this Code Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: Stricken subdivisions duplicated other provisions or were found to be too restrictive by the Virginia Code Commission.

§ 54.1-826. § 9-43. Default of licensee as to report or payment of pay taxes.— (1) A. Failure to report or unsatisfactory report. - Whenever any person or persons, club, corporation or association shall fail fails to make a report of any contest at the time prescribed by this chapter, or whenever such the report is unsatisfactory to the Board, the secretary may examine or cause to be examined, the books and records of such person or persons, club, corporation or association, and subpoena and examine under oath its officers or such other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest and the amount of taxes due pursuant to the provisions of this chapter; which tax he may, upon and. The Director may fix and determine the tax as a result of such the examination; fix and determine.

(2) B. Default in payment of taxes. - In case of a default for a period of twenty days after notice to the delinquent licensee in the payment of any taxes so adjudged to be due, together with the expenses incurred in making such the examination; for a period of 20 days after notice to such delinquent person or persons, club, corporation or association of the amount, such the delinquent person or persons, club, corporation or association shall ipso facto forfeit its or their license and shall be thereby disqualified from receiving any new license, or any a renewal of its or their license; and it or they shall in or a new license. In addition forfeit to the Commonwealth the sum of \$1,000 shall be forfeited to the Commonwealth, which sum may be recovered by the Attorney General in the name of the Commonwealth, in the same manner as other penalties are by law recovered.

Drafting Note: No change in the law.

§ 9-44. Violation a misdemeanor.— Any person who violates any of the provisions of this chapter, for which a penalty is not herein expressly prescribed, shall be guilty of misdemeanor.

Drafting Note: This section is being repealed. Proposed § 54.1-111 provides that violations will be Class 1 misdemeanors.

§ 9-44.1. Injunctive relief for violation of chapter. In the event of violation of any provision of this chapter, in addition to any other remedy, the Director or Board may apply to any court of record in the City of Richmond for relief without being compelled to allege or prove that any adequate remedy at law does not exist.

Drafting Note: This section is being repealed. Subsection B of proposed § 54.1-111 provides that the Department of Commerce may institute proceedings for injunctive relief. This section goes beyond § 54.1-111 B by allowing the Board to seek injunctive relief; however, the Code Commission decided not to retain the section.

§ 9-44.2. Institution of certain proceedings by Director or Board.— The Director or Board shall have the power to institute such criminal or civil proceedings, or both, if it finds that provisions of this chapter have been violated.

Drafting Note: Repealed at the direction of the Code Commission.

CHAPTER 9.

BRANCH PILOTS.

Article 1.

Board for Branch Pilots.

54.1-900. Definitions.—For the purposes of this chapter, unless the context requires a different meaning:

“Board” means the Board for Branch Pilots.

“Branch pilots” means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-905.

“Limited branch pilots” means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-909.

“Pilot” means branch pilot and limited branch pilot.

Drafting Note: A definitional section was added. The name of the Chapter was changed from Pilots to Branch Pilots. To conform with the names of the other boards, the name of the Board was changed from the Board of Commissioners to Examine Pilots to the Board for Branch Pilots.

~~§ 54-525. Classification of pilots.—Pilots who have qualified and been licensed in accordance with the provisions of § 54-536 shall be designated as branch pilots. Pilots who have qualified and been licensed in accordance with the provisions of § 54-542 shall be designated as limited branch pilots.~~

Drafting Note: The provisions of this section were moved to the definitional section (§ 54.1-900).

~~§ 54.1-901 § 54-527 . Appointment and removal of members ; quorum; clerk .—The Board for Branch Pilots shall consist of nine members to be appointed as follows: the Circuit Court of the City of Hampton shall appoint three persons, only one of whom shall be a branch pilot, and the Circuit Court of the City of Norfolk ; shall appoint four persons, only two of whom shall be branch pilots, and the Circuit Court of the City of Portsmouth shall appoint two persons, only one of whom shall be a branch pilot ; to constitute the Board of Commissioners to Examine Pilots, referred to in this chapter as the Board . The court which appointed a member may remove him for incapacity, neglect of duty or misconduct and may fill the vacancy.~~

~~Four members of the Board shall constitute a quorum. The Board shall appoint a clerk, who shall keep a record of the Board’s proceedings.~~

Drafting Note: The provisions of current §§ 54-528 and 54-531, which are being repealed, were added to this section, except that the requirement that the Board hold its meetings in Norfolk was not retained.

~~§ 54-528 . Meetings and quorum .— The Board shall hold its meetings in the City of Norfolk, four members whereof shall constitute a quorum.~~

Drafting Note: This section is being repealed. The provision regarding a quorum was moved to § 54.1-901. The requirement that the Board hold its meetings in Norfolk was not retained.

~~§ 54.1-902 § 54-529 . Rules and regulations Regulations ; penalty for violation ; hearing .— The Board shall have full authority is authorized to make such rules and promulgate regulations as it may think necessary for the proper government and regulation of pilots appointed by it, and to prescribe such penalties for the violations violation of such rules and regulations as it may deem necessary and proper, including in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). Regulations may include the right to suspend for such time as it may prescribe, or to revoke entirely the branch of any pilot appointed by it; provided, that before inflicting . Before any penalty for violation of such rules and the regulations the rules and regulations shall be printed and may be imposed, a printed copy thereof of the regulations shall be furnished to each of the pilots to whom branches have been granted by the Board pilot . Before any trial for violation of such rules and regulations shall take place, due notice shall be given of the time and place of trial and of the rule or regulation alleged to have been broken .~~

Drafting Note: It was provided that the Board’s regulations must be in accordance with the Administrative Process Act. The last sentence was removed because notice provisions are covered by subsection B of § 9-6.14:12 (Administrative Process Act).

~~§ 54-530 . Removal of Commissioners . —The court, by which any Commissioner is appointed, may remove him for incapacity, neglect of duty, or misconduct, and fill any vacancy in the office .~~

Drafting Note: The provisions of this section are included in § 54.1-901.

~~§ 54-531. Clerk of Board. The Board shall appoint a clerk, who shall keep a record of all its proceedings.~~

Drafting Note: This language of this section is included in § 54.1-901.

~~§ 54-532. Administration of oaths and issuance of summons.— The Commissioners, or any one of them, may administer an oath and issue a summons .~~

Drafting Note: This section is being repealed because oaths and summons are covered by subsection C of § 9-6.14:12 and § 9-6.14:13 (Administrative Process Act).

§ 54.1-903 § 54-533 . Decisions of controversies between pilots and masters, etc.; judgment of Board.—The Board may decide any controversy between pilots to whom it has granted branches, or between any such a pilot and the master, owner, or consignee of any vessel, which may arise under any law concerning pilots in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) . Its decision shall be final. If such the decision requires the payment of money, the Board shall enter a judgment therefor on the record of its proceedings ; and on . When an authorized officer receives a copy thereof being put into the hands of any sheriff or sergeant of the judgment , he shall enforce the payment thereof as if it were an execution against the property of the debtor ; and have the same fees and compensation .

Drafting Note: The words "sheriff or sergeant" were replaced with "authorized officer." Section 9-6.14:16 gives aggrieved parties a right to court review of agency actions, so the sentence that the Board's decision is final was removed and it was provided that the hearing should be in accordance with the Administrative Process Act.

§ 54-534. Notice required before entry of judgment.— But no judgment shall be entered, unless due notice be given of the time and place of trial, and of the claim or charges to be preferred; and where. Where the charge is against the pilot is for neglect of duty or violation of law, such judgment shall in no case be for a longer suspension of the branch of the accused may be suspended for not more than twelve months ; nor less than one month, at the discretion of the Board, unless a longer time is expressly prescribed in the rules adopted by the Board as provided for in § 54-529 .

Drafting Note: This section was combined with the section above. The first sentence was removed because the Administrative Process Act covers it. Suspension of a license was made discretionary rather than mandatory.

§ 54.1-904 § 54-535 . Limitation of powers of Board.—Nothing in this chapter shall authorize the Board to decide upon the liability of a pilot or his apprentice to any person injured by his negligence or misconduct, or to prevent such person from recovering for any damage occasioned thereby.

Drafting Note: No change in the law.

Article 2.

Examination and Licensure.

§ 54.1-905 § 54-536 . Examination of pilots; issuance of certificates license ; bonds and oath of office.— Every person applying to the Board to be examined shall produce a certificate of the circuit court of the county or corporation court of the city in which he resides, that he is of honest demeanor, and a citizen of the State, and furnish proof of his having served as apprentice to some pilot of the State for five years. Applicants for examination shall submit to the Board a certificate from the circuit court in the county or city of their residence stating that the applicant is of good character and a resident of the Commonwealth. The applicant shall also submit proof that he has served as an apprentice for five years, including three years as a limited branch pilot. If the Board find him finds the applicant qualified to act as a branch pilot it shall issue to him a certificate license to that effect , and he shall thereupon become a State state officer, to be known as a branch pilot ; to and shall hold office as such for one year next ensuing ; but before he shall . Before he may perform any of the duties of his office he shall give bond before the clerk of the circuit court of the county or the clerk of the corporation court of the city in which he resides in the penalty of \$500, conditioned for the faithful performance of his duties as such, and there shall be administered to him by the clerk he shall take the oath of office required by § 49-1.

Branch pilots may conduct and pilot any vessel.

Drafting Note: The words "honest demeanor" were changed to "good character." The provisions of current § 54-555 which is being repealed are added to this section.

§ 54-537. Expiration of certificates. All certificates issued by the Board shall expire on the thirty-first day of December of the year in which issued.

Drafting Note: This section is incorporated in the following section (§ 54.1-906).

§ 54.1-906 § 54-538 . Renewal Expiration and renewal of certificates licenses .— All licenses issued by the Board shall expire on December 31 of the year in which issued. Every pilot to whom who holds a certificate license as a branch pilot shall be issued shall appear before the Board every twelve months, and , if the Board shall deem deems him qualified, it shall issue to him a renewal certificate renew his license , which shall continue his term of office for one year following each renewal ; and he shall upon . Upon each renewal ; he shall appear before the clerk before whom he originally qualified, and renew his oath of office, but the bond given

by him shall remain in full force and virtue .

Drafting Note: This section combines current sections 54-537 and 54-538.

~~§ 54.1-907 § 54-539 . Fees for certificates licenses or renewals; disposition thereof ; proration .--Upon the issue of the original certificate license as a branch pilot and each renewal thereof, the pilot shall pay to the Board the sum of fifty-five dollars , which amount . Notwithstanding the provisions of § 54.1-304, the Board shall deposit the payment to its credit in a bank . Within and within ten days after each of such amounts is paid receipt of payment , the Board shall render a detailed statement to the Comptroller and shall at the same time remit by check, direct to the State Treasurer, the sum of fifty dollars out of each of such payments payment .~~

The fee paid for licenses issued by the Board shall be prorated according to the quarter of the year in which issued.

Drafting Note: This section combines current §§ 54-539 and 54-540. No change in the law. Under current § 54-1.33 (proposed § 54.1-304) the Director of the Department of Commerce has the duty to collect, account for and deposit fees paid to a regulatory Board. To reconcile this conflict, the words "Notwithstanding the provisions of § 54.1-304" were added.

~~§ 54-540. Proration of fees. The license fees or taxes to be paid for the certificates issued by the Board shall be prorated according to the quarter of the year in which issued.~~

Drafting Note: This section is being incorporated in § 54.1-907.

~~§ 54.1-908 § 54-541 . Local State and local licenses prohibited.--No state, city, town or county licenses shall be assessed against any branch pilot to whom a certificate is issued under § 54-536 .~~

Drafting Note: No change in the law.

~~§ 54.1-909 § 54-542 . Certificate License as limited branch pilot.--Any apprentice to a state branch pilot may apply to the Board for a certificate license as a limited branch pilot. The Board may grant him such a certificate license after proper examination if in the opinion of the Board the applicant be is qualified. The Board may cause to be written endorse on the certificate license such a limitation of draft or tonnage ship units as deemed proper and such a limited branch pilot shall perform his duties of piloting and conducting vessels within the limitation imposed by his certificate license .~~

Drafting Note: The word "tonnage" was stricken and "ship units" added.

~~§ 54-543. Examination of apprentices.--If any apprentice of a pilot, being examined by the Board which appointed his master, shall be deemed qualified, it may endorse on a copy of his master's branch the name of the pilot boat, her port, and the class to which such master belongs.~~

Drafting Note: The Board has determined that this section can be repealed because it is duplicative of § 54.1-909.

Article 3.

Duties and Liabilities of Master, etc.

~~§ 54.1-910 § 54-544 . What vessels to take pilots and where.--The master of every vessel, other than vessels exclusively engaged in the coastwise trade and those made exempt by United States statutes, inward bound from sea to any port in Virginia or any intermediate or other point in Hampton Roads, the Virginia waters of Chesapeake Bay, or in any navigable river in Virginia which flows into Chesapeake Bay or Hampton Roads, shall take the first Virginia pilot that offers his services ; and any . Any such vessel outward bound, or bound from one port or point in Virginia to another port or point, shall take the first Virginia pilot that offers his services at the port, point, or place of departure or sailing ; and any . Any master refusing to do so shall immediately pay to such pilot full pilotage from the point where such the services are offered to the point of destination of such the vessel. Any master or other person violating the provisions of this section shall be subject to the penalties prescribed in this chapter.~~

Drafting Note: No change in the law. The last sentence of the section is no longer necessary because of the general penalty section.

~~§ 54-546. When only licensed Virginia pilots to be locally employed.--In all cases where pilotage is optional, none but licensed Virginia pilots shall be locally employed, under the penalty prescribed in § 54-548.~~

Drafting Note: The Board has determined that the provisions of this section are no longer current and can be repealed.

§ 54.1-911 § 54-547 . Notice to pilot officers of time for sailing, etc . -The master, agent or consignee of any vessel outward bound, or transferring between points above Old Point Light, bearing north-northwest, requiring a pilot shall give at least two hours' notice of the need for a pilot to either the Norfolk or Newport News the pilot officers of the time of being ready to sail for sea or transferring .

Drafting Note: Obsolete provisions were removed.

§ 54.1-912 § 54-548 . Forfeiture for employing unauthorized pilot *Employing unlicensed pilots* .- Any No master employing shall employ any person who is not authorized by law, or any pilot who has removed from the State, licensed as a pilot to act as a pilot of his vessel ; shall pay \$100 to any regular branch pilot who shall sue for the same .

Drafting Note: The provision that a master may not employ a pilot who has removed from the state and the provision that a pilot may recover \$100 for a violation of this section were removed. The general penalty section will apply.

§ 54.1-913 § 54-549 . Forfeiture for concealing *Concealing name of vessel*.- If the The master of any a vessel conceal or obscure the name thereof, or refuse shall not conceal or obscure or refuse to disclose the same name of his vessel when spoken to by a pilot ; he shall forfeit to the pilot fifty dollars .

Drafting Note: The forfeiture provision was removed, the general penalty section (§ 54.1-927) will apply.

Article 4.

Duties, Rights and Powers of Pilots.

§ 54.1-914. § 54-550 . Keeping pilot boat.-Every pilot, or the company to which he belongs, shall keep one sufficient boat of at least thirty feet keel ; to which he shall be attached and in which he shall cruise. Anyone ; acting as a pilot without having such a boat, shall forfeit \$150 to any person who may sue for the same .

Drafting Note: Obsolete provisions of this section were removed.

§ 54-551 . Name and port to be marked on pilot boat.-If any pilot boat shall not have her name, and the port to which she belongs, marked ten feet below the head of the foresail on each side, in letters at least nine inches long, except in case of a steam pilot boat which shall have her name on each bow instead of on her foresail, the owners thereof shall have no pilotage.

Drafting Note: This section is being repealed because the Board has determined that it is no longer current.

§ 54-552 . Answering signal for pilot.-The master of any vessel wanting a pilot for any port in this State ; shall signify it by a signal at the foremast or fore-topmast head ; whereupon a pilot shall repair to and pilot such vessel.

Drafting Note: This section is being repealed because the Board has determined that it is no longer current.

§ 54-553. Offer of services to vessel.-Every pilot, cruising or standing out to sea, shall offer his services to the vessel of his class nearest to land, or in most distress.

Drafting Note: This section is being repealed because the Board has determined that it is no longer current.

§ 54.1-915. § 54-554. Pilot first meeting vessel at sea to have preference.-The first pilot who meets a vessel coming in, which his branch entitles him to conduct, shall have the right to take charge of and conduct her into York river ; Hampton Roads, Newport News, Norfolk, Mobjack Bay, Urbanna, or Smith's Point aforesaid, and receive the pilotage allowed by law; but any pilot that boards a vessel off any vessel other than his boat, shall deliver up the same to the first authorized pilot that offers his services from a lawful Virginia pilot boat anywhere below the Thimble Light; and the master of any such vessel employing a pilot from any other than a lawful Virginia pilot boat, shall be liable to the first regularly licensed pilot who offers his services from a lawful pilot boat of this State anywhere below Thimble Light port .

Drafting Note: Obsolete provisions of this section were removed.

§ 54-555 . What vessels branch pilots may conduct.-Branch pilots may pilot and conduct vessels of every burthen and description .

Drafting Note: The provisions of this section are added to § 54.1-905.

§ 54-556 . What vessels limited branch pilots may conduct.-Limited branch pilots may pilot and conduct vessels subject to the limitations imposed by their certificates.

Drafting Note: This section is being repealed because its provisions duplicate the provisions of § 54.1-909.

§ 54-557. **Piloting by apprentices.**—An apprentice of a pilot, examined and passed by the Board in accordance with § 54-543, may conduct and pilot vessels as his master might do, and subject to the same regulations .

Drafting Note: This section is being repealed because the Board has determined that it is no longer current.

§ 54.1-916 § 54-558 . **Discretion of pilot piloting vessel.**— After a licensed Virginia pilot shall have offered his services pursuant to the provisions of this chapter, or after the services of any such pilot shall have been voluntarily required or engaged, such pilot *Any pilot piloting a vessel* shall have full discretion as to when such *the* vessel shall be piloted to or from sea, or to or from any port or place within the *State Commonwealth* or situated within any of the waters referred to in § 54-544, and shall not be interfered with by the master or any other person, but such § 54.1-910. *The* pilot's discretion shall be exercised in a reasonable way, with a view to the vessel's safety as well as with a view to the safety of the *State's Commonwealth's* waters and ports therein situated . Any pilot, master or other person violating the provisions of this section shall be subject to the penalties prescribed by this chapter.

Drafting Note: No change in the law. The last sentence is not necessary because of the general penalties section (§ 54.1-927).

§ 54-559 . **Conducting vessel into quarantine.**—Any pilot first meeting a vessel coming from sea shall inquire into the health of her crew and the place from which she last came; and if she has a dangerous, contagious or infectious disease on board, or comes from any place from which vessels coming are required to perform quarantine in this State, or from any part thereof, he shall direct the vessel to follow his boat, and carefully conduct her to the nearest place appointed for vessels to quarantine, and, as soon as possible, give notice thereof to the health officer of the port nearest thereto .

Drafting Note: This section is being repealed because the Board has determined that it is no longer current.

§ 54-560. **Suspension for refusing to go on board, or for misconduct.**— If any pilot or apprentice, without sufficient excuse, refuse, when requested by the master, to go on board any vessel and pilot her; or be intoxicated, or guilty of any other misbehavior or neglect of duty, while in charge of a vessel, he shall be suspended for not less than three nor more than six months.

Drafting Note: This section is being repealed because the Board has regulations governing these situations.

§ 54.1-917 § 54-561 . **Publication of notice of suspension; how suspension enforced** *Enforcement of suspension* .— Whenever a pilot or apprentice is suspended, the fact shall be published in some newspaper printed in the City of Norfolk, the cost of which publication shall be paid by such pilot; and if any pilot, so suspended, . *If any individual whose pilot's license has been suspended* is found on board of any vessel as a pilot, or as such offer offers to conduct any such vessel, he may be dismissed from such *the* vessel by any *licensed* pilot authorized to pilot her , to whom all the pilotage shall be paid ; and the Board which gave him his branch ; shall issue a warrant directed to any sheriff, or other officer, requiring him to apprehend such suspended pilot or apprentice, and detain him in custody until bond be given, in a penalty of not less than \$100, with condition for his good behavior during his suspension ; which bond shall be taken by the officer and returned by him to the corporation court of the City of Norfolk ; and may be enforced by action, seire facias, or motion. Should such bond be not given, the officer shall confine him in the most convenient jail until it is given, or he be discharged therefrom by the Board. *The Board may proceed against the individual under the provisions of § 54.1-924 as if the individual had never been licensed. An individual whose pilot's license has been suspended may also be proceeded against under § 54.1-111.*

Drafting Note: The provision for publication of license suspensions is being repealed because of its limited usefulness. It was provided that the detention and arrest of an individual violating this section would be handled in accordance with § 54.1-924. A provision stating that an individual with a suspended license could be proceeded against under § 54.1-111 (current § 54-1.20) was added.

Article 5.

Fees and Charges.

§ 54.1-918 § 54-562 . **State Corporation Commission to prescribe and enforce rates of pilotage and other charges.**—The State Corporation Commission shall prescribe and enforce the rates of

pilotage and other charges to be observed in the business of pilotage, but before the Commission shall fix or prescribe any such fixes or prescribes rates or charges it shall first give ten days' notice of the time and place of a hearing ; to the individual pilots, company or association of pilots and all owners, charterers, operators or agents of vessels who are directly affected by such rates or charges ; by publication in a newspaper of general circulation in each of the Cities of Norfolk, Portsmouth and Newport News. For the purpose of determining the fair basis of such rates and charges, the Commission shall, for the two years next preceding, have access to the books and records of the individual pilots ; who have no organized association, and of any association of pilots who have an organized association ; whose rates are to be fixed by the Commission, and shall have the same powers in all respects as are given by law in fixing rates and charges of transportation and transmission companies.

The Commission , in fixing such rates and charges, shall fix such amounts as that will be a fair charge for the service rendered and to accomplish this purpose . The Commission shall have due regard to for necessary operating expenses, maintenance of, depreciation on, and return on investment in properties used and useful in the business of pilotage, and the rates and charges of pilotage at comparable and competing ports of the United States.

When such rates and charges shall have been fixed and prescribed by the Commission, they shall be the legal rates and charges of pilotage in Virginia, and shall be enforced as provided by law, and the Commission shall have the power to change or alter such rates or charges after notice and hearing as hereinbefore provided in this section .

Drafting Note: No change in the law.

§ 54.1-919 § 54-563 . Appeal from action of Commission.—From any action of the State Corporation Commission under the preceding section (§ 54-562) § 54.1-918 , an appeal may be taken by the individual pilots, company or association affected, or by any other person, firm or corporation feeling aggrieved by such action, in the manner prescribed in Article IX, § 4 of the Constitution of Virginia for appeals from actions of the Commission prescribing rates, charges or classifications of traffic affecting telephone companies, telegraph companies, and transportation companies .

Drafting Note: No change in the law.

§ 54.1-920 § 54-564 . Detention on seagoing vessel.—If a pilot be is detained on board any seagoing vessel he shall be paid in accordance with by the master, owner, or consignee of the vessel the rate prescribed for a day's detention by the State Corporation Commission for a day's detention for each day he is so detained ; to be paid by the master, owner, or consignee of such vessel . If any such pilot be is carried beyond the limits of his State the Commonwealth against his will, he shall be entitled to recover the sum of \$300 from the master or owner of the vessel upon which he has been carried away. Every vessel having a branch pilot, and arriving at the pilot station, shall remain there fifteen hours, if required, to give the pilot an opportunity to be taken off, and for failing so to do shall forfeit to him fifty dollars.

Drafting Note: The provision requiring vessels to remain at the pilot station for fifteen hours was removed.

§ 54.1-921 § 54-565 . Quarantine detention.—If any pilot be is permitted to go on board a vessel without being informed of a contagious or infectious disease on board, and be is obligated to remain on board, or perform quarantine in consequence thereof he shall be paid for each day's detention in accordance with the rate prescribed for a day's detention by the State Corporation Commission.

Drafting Note: No change in the law.

§ 54.1-922 § 54-566 . Who liable Liability for pilotage and other allowances.—The master and the owner of every vessel shall each be liable to the pilot for his pilotage and other allowances, and also the consignee or supercargo of any vessel not owned by a citizen resident of the State; and if such Commonwealth. If the consignee or supercargo refuse refuses to become responsible to the pilot for his fees, the master or owner of the vessel shall, before she leaves her port of departure, deposit with some responsible person, subject to the order of the pilot, the amount of the pilotage due him.

Drafting Note: No change in the law.

§ 54-567. Vessel following another to pay pilotage.—If a vessel having no pilot on board follow another that has a pilot, such pilot shall have pilotage for the vessel so following.

Drafting Note: This section is being repealed because the Board has determined that its provisions are no longer current.

§ 54-568. Vessels on Potomac excepted from pilotage.—No vessel, bound to or from any point on the Potomac, shall be required to pay pilotage. But if she does take a pilot, she shall pay the regular rate of pilotage to Smith's Point.

Drafting Note: This section is being repealed because the Board has determined that its provisions are no longer current.

§ 54.1-923 § 54-569 . When pilot to produce branch.—Every pilot shall, if required, produce his branch at the time of demanding his fees, before he shall be entitled to receive the same.

Drafting Note: No change in the law.

§ 54-570. Payment of pilots' accounts.—Pilots may state their accounts, verified by affidavit, and lodge them for collection with their agents in Norfolk, Richmond, Newport News, or Yorktown, or wherever they may think it necessary to appoint such agent; and if any person, liable on any such account, fail to pay the amount thereof to the agent or the pilot himself within three days after demand made, he shall pay five dollars, in addition to such amount, to the pilot.

Drafting Note: This section is being repealed because the Board has determined that its provisions are no longer current.

Article 6.

Offenses and Penalties Generally.

§ 54.1-924 § 54-571 . Piloting, etc., vessel without authority license ; how offenders proceeded against.— If any No person ; not authorized by law ; or any pilot, after removing from the State, undertake to conduct or pilot shall conduct or pilot a vessel to or from sea, or to or from any port or place in Virginia ; or if any master or person on board any steamboat or towboat tow a vessel to or from sea, or to or from any port or place in Virginia, except as authorized by this chapter, without having a pilot on board of such vessel (if one shall offer his service), he shall be deemed guilty of a misdemeanor ; and, upon conviction thereof ; shall, at the discretion of the jury, be imprisoned in jail not more than three months or fined not exceeding \$200 unless he is licensed under this chapter .

Warrants for such offenders persons violating this section may be issued by any magistrate , upon the oath of any party complaining, by any justice of the peace, or trial justice other than a civil and police justice, or clerk of a trial justice, of any county or city in this State in which such offender may be at the time; and, upon proof of probable cause, the offender shall be bound, with surety in due form of law, to appear at the next term of and shall be returnable to the Circuit Court of the City of Norfolk. After a bond hearing held pursuant to Chapter 9 of Title 19.2 (§ 19.2-119 et seq.), the bond shall be returned by the judicial officer to the circuit court of such county or corporation court of such city the City of Norfolk, which shall have jurisdiction for trial of such misdemeanor ; and the circuit court of such county or corporation court of such city shall have jurisdiction for the trial thereof .

Drafting Note: The provision that licensed pilots who have moved out of the state cannot pilot a vessel was removed. The penalty for violating the section was removed because the general penalty section will be applicable. Provisions regarding a bond hearing were added. It was provided that the Circuit Court of the City of Norfolk will have jurisdiction.

§ 54.1-925 § 54-572 . Exception as to vessels in distress.— The preceding section (§ 54-571) Section 54.1-924 shall not prevent any pilot of this State or Maryland or any other person ; from assisting a vessel in distress ; that he may fall in with, having Cape Henry in view, and no authorized branch pilot appearing nor from conducting such vessel into Hampton Roads, or any other harbor . Any such pilot, or other person aforesaid, shall be entitled to full pilotage; but, if he is not a pilot, he shall deliver up the vessel to any authorized pilot of this State ; who may offer his services to take charge of her, and then shall receive from such pilot half the pilotage.

Drafting Note: Outdated provisions of this section were removed.

§ 54.1-926 § 54-573 . Pilot receiving unlawful fees.— If a pilot demand or receive for any service less than the lawful fees, he shall forfeit the amount of the lawful fees, which may be recovered, by any person who will claim the same, by warrant or by motion, one half of which recovery shall be paid to the Board, and may, moreover, be suspended by the Board for not exceeding six months. If any pilot demand and receive greater fees than are allowed by law, he shall forfeit to the master or owner double the amount of the fees paid to him in any such case ; to be recovered in the same manner. No pilot shall demand or receive other than the lawful fee for any service. Any pilot who violates this section may be suspended by the Board for up to six months.

Drafting Note: The provision that any person can recover the lawful fee was removed.

§ 54.1-927. Violation of chapter a misdemeanor. —Any person who violates any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

Drafting Note: A general penalty section was added in lieu of the penalty provisions that currently appear in many of the sections. Many of the penalties in the current law are recoverable by pilots or by any person who sues for it. This change makes most of the penalties criminal penalties, and there will be no provision for recovery by private persons, except for §§ 54.1-910, 54.1-917 and 54.1-920.

CHAPTER 10.

COMMERCIAL DRIVER TRAINING SCHOOLS.

§ 54.1-1000 § 54-145.11 . Definitions.—As used in this article chapter unless the context requires a different meaning :

“Board” means the Board for Commercial Driver Education Schools.

“Class A licensee” means a school which provides occupational training in the operation of tractor-trailers or motor vehicles in excess of 20,000 pounds, exclusive of any load.

“Class B licensee” means a school which provides training in the operation of any type of motor vehicle other than those included in Class A licensure.

(a) “Commercial driver training school” or “school” means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services ; ~~but does~~ . “Commercial driver training school” or “school” does not mean any college, university, school established pursuant to § 46.1-16.1, school maintained or classes conducted by employers for their own employees where no fee or tuition is charged, schools or classes owned and operated by or under the authority of bona fide religious institutions, or by the State Commonwealth or any political subdivision thereof, or schools accredited by accrediting associations approved by the Department of Education.

(b) “Instructor” means any person, whether acting for himself as operator of a commercial driver training school or for such school for compensation, who teaches, conducts classes of, gives demonstrations to , or supervises practice of, persons learning to operate or drive a motor vehicle.

(c) “Board” means the Board for Commercial Driver Education Schools.

(d) “Class A licensee” means a school the purpose of which is to provide occupational training in the operation of tractor-trailers or motor vehicles in excess of 20,000 pounds, exclusive of any load.

(e) “Class B licensee” means a school the purpose of which is to provide training in the operation of any type of motor vehicle other than those included in Class A licensure.

Drafting Note: The terms were rearranged alphabetically.

§ 54.1-1001 § 54-145.12 . Board for Commercial Driver Training Schools ~~continued~~; membership, ~~organization, etc.~~ officers, quorum; powers .— A. The Board for Commercial Driver Training Schools is hereby ~~continued~~. It shall consist of five members, at least two of whom shall be licensed instructors who have worked in the field of driver training for at least five years immediately prior to appointment. The ~~term~~ terms of board members shall be three years.

The Board shall elect a chairman and a vice-chairman.

A majority of the Board in meeting duly assembled may perform and exercise all the duties and powers devolving upon the Board shall constitute a quorum .

B. The Board shall have the authority to promulgate such rules and regulations necessary to carry out the functions of the Board as may be necessary and to provide adequate training for students. The rules and regulations shall include but need not be limited to provisions regarding curriculum requirements, contractual arrangements with students and , obligations to students, facilities and equipment, qualifications of instructors , and financial stability of the school.

Drafting Note: No change in the law.

§ 54.1-1002 § 54-145.13 . Licenses required for school and instructor.— (a) A. No commercial driver training school shall be established or continue operation on or after January 1, 1969, unless such the school shall apply for and obtain obtains from the Board a license authorizing such the school to operate within this State Commonwealth .

(b) B. No instructor as defined in § 54-145.11 (b) shall perform the actions therein enumerated after January 1, 1971, in the definition of "instructor" in § 54.1-1000 unless he shall apply for and obtain obtains from the Board a license authorizing him to act as driving instructor.

Drafting Note: No change in the law.

§ 54.1-1003 § 54-145.20 . Certification of driver education courses by State Department of Education.—The State Department of Education shall certify to the Division Department of Motor Vehicles the course offered by any commercial driver training school licensed under the provisions of Article 1 (§ 54-145.11 et seq.) of this chapter as an approved course of driver education for purposes of fulfilling such condition if the State Department of Education finds that such the course is of comparable content and quality to that offered in the State's public schools ; provided that in . In making such finding, the State Department of Education shall not require that the instructors of any commercial driver training school meet the certification requirements of teachers in the State's public schools ; and provided further, that the State . The Department of Education may accept twenty years' service with the Virginia State Police Department of State Police by a person who retired or resigned while in good standing from such Department in lieu of the requirements established pursuant to Article 1 of this chapter.

Drafting Note: No change in the law.

CHAPTER 11.

CONTRACTORS.

Article 1.

Regulations of Contractors.

§ 54.1-1100. § 54-113. Meaning of terms Definitions .— As used in this chapter unless the context requires a different meaning :

(1) "Board" means the State Board for Contractors.

"Class A contractors" perform construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$40,000 or more, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$300,000 or more.

"Class B contractors" perform construction, removal, repair or improvements when (i) the total value referred to in a single contract or project is less than \$40,000, and when the work performed in such contract is \$1,500 or more, or (ii) when the work is for the purpose of constructing a water well to reach groundwater as defined in § 62.1-44.85 (8) of the Code of Virginia, regardless of contract or project amount.

(2) "Contractor" means any person, firm, association, or corporation that for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled or leased by another person or any other improvements to such real property.

(3) "Person" means any person, firm, corporation, association, partnership, joint venture or other legal entity.

(4) The singular personal pronoun shall be taken to include any person, firm, association, corporation, partnership, joint venture or other legal entity.

(5), (6) [Repealed.]

(7) "Department" means the Department of Commerce.

(8) "Director" means the Director of the Department of Commerce.

(9) "License" means a method of regulation whereby the practice of the profession or occupation licensed is unlawful without the issuance of a license.

(10) "Class A contractors" are those performing construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$40,000 or more or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$300,000 or more.

"Person" means any individual, firm, corporation, association, partnership, joint venture or other legal entity.

(11) "Value" means fair market value. When improvements are performed or supervised by a general contractor or subcontractor, the contract price shall be prima facie evidence of value.

(12) "Class B contractors" are those performing construction, removal, repair or improvements when (i) the total value referred to in a single contract or project is less than \$40,000, and when the work performed in such contract is \$1,500 or more, or (ii) when the work is for the purpose of constructing a water well to reach groundwater as defined in § 62.1-44.85 (8) of the Code of Virginia, regardless of contract or project amount.

Drafting Note: No change in the law. Terms were arranged in alphabetical order. The definition for license was deleted because it duplicates othe provisions in this subtitle.

§ 54.1-1101. ~~§ 54-141.~~ Exemption from chapter Exemptions .—The provisions of this chapter shall not apply to:

- (1) 1. Any governmental agency performing work with its own forces;
- (2) 2. Work bid upon or undertaken for the armed services of the United States under the Armed Services Procurement Act;
- (3) 3. Work bid upon or undertaken for the United States government on land under the exclusive jurisdiction of the federal government either by statute or deed of cession;
- (4) 4. Work bid upon or undertaken for the Department of Highways and Transportation on the construction, reconstruction, repair or improvement of any highway or bridge; and
- (5) 5. Any other persons who may be specifically excluded by other laws but only to such an extent as such laws provide ; ; and
- (6) 6. Any material supplier who renders advice concerning use of products sold and who does not provide construction or installation services.

All other contractors performing work for any government or for any governmental agency are subject to the provisions of this chapter and are required to be licensed or registered as provided therein herein .

Drafting Note: No change in the law. Added "registered."

§ 54.1-1102. ~~§ 54-114.~~ State Board for Contractors ~~continued membership; offices; meetings; seal; record.~~— A. The State Board for Contractors ; within the Department of Commerce, is ~~continued.~~

§ 54-115. Qualifications and terms of members. The Board shall consist ~~be composed~~ of nine members to be appointed for terms of five years, save for initial terms beginning July 1, 1980.

The ~~as follows:~~ larger part of the business of one member of the Board shall be the construction of highways a licensed Class A contractor ; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single - family residences; the larger part of the business of one member shall be the construction of home improvements; and one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; and ~~there shall be two shall be~~ citizen members. The terms of the Board members shall be five years.

§ 54-120. General and special meetings; quorum. The Board shall meet at least four times each year, once in January, April, July and October, and at such other times as may be deemed necessary. Each April, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year period. Five members of the Board shall constitute a

quorum.

§ 54-121. Officers. At the April meeting in each year the Board shall elect a chairman and a vice-chairman, each to serve for one year.

§ 54-119. Bylaws, rules and regulations. The Board shall promulgate such bylaws, rules and regulations ; not inconsistent with law *statute* ; as may be necessary to regulate the practice of contracting pursuant to § 54-1.28 of the Code of Virginia and the provisions of this chapter .

§ 54-123. Seal. The Board shall adopt a seal for its own use. The seal shall have with the words " State Board for Contractors, Commonwealth of Virginia ; ." and the ~~The~~ Director shall have charge, care and custody thereof ~~of the seal~~ .

B. The Director shall maintain a record of the proceedings of the Board.

Drafting Note: Current §§ 54-114, 54-115, 54-119, 54-120, 54-123 and 54-124 were merged into one section. There was no change in the law.

§ 54-124. Record of proceedings; funds. The Director shall keep a record of the proceedings of the Board and shall receive and account for all moneys derived from the operation of this chapter. The compensation of the Director and the employees within the Department, including the compensation of the members of the Board, shall be paid out of the total funds collected on account of the services performed by the Board and such compensation shall be charged to the account of the Board, and in furtherance of the accomplishment of this function the Director shall maintain a separate account for the Board showing the moneys collected on its behalf and the expenses allocated to the Board.

Drafting Note: This section is being repealed. The provision regarding the Director's duty to maintain a record of the Board proceedings was placed in subsection B of proposed § 54.1-1102. The other provisions in this section duplicate proposed § 54.1-308, pertaining to departmental expenses, and proposed § 54.1-304, pertaining to the Director's duties.

§ 54.1-1103. § 54-128. Necessity for license for Class A contractor .— It shall be unlawful for any No person to shall engage in, or offer to engage in, Class A contracting work in this State Commonwealth ; unless such person he has been duly licensed under the provisions of this chapter ; however, . Except as provided in § 54.1-1117, the issuance of such license shall not entitle the holder to engage in any activity for which a special license is required by law ; except as provided in § 54-145.2 .

Drafting Note: No change in the law. Class A contractors are licensed and Class B contractors are registered.

§ 54.1-1104. § 54-125. Register of applicants ; evidence .—The Director shall keep a register of all applicants showing for each the their date of application, name, qualifications, place of business, place of residence, and whether such application was approved or refused. The books and register of the Board shall be prima facie evidence of all matters recorded therein.

Drafting Note: No change in the law.

§ 54.1-1105. § 54-126. Roster of Class A contractors. —A roster showing the names and places of business of all Class A contractors shall may be published yearly at the discretion of the Board and sent mailed to each contractor regulated by this chapter interested persons upon request . Copies shall be mailed to the clerk, building officials and commissioner of revenue or equivalent thereof of each incorporated city, town and county in the State.

Drafting Note: This section is being amended to pertain only to Class A contractors and to make the publication of the roster discretionary.

§ 54.1-1106. § 54-129.1. Application for Class A license; fees; examination and issuance.— Any person Applicants desiring to be licensed as a Class A contractor ; as defined in § 54-113, shall file with the Director thirty days prior to any regular or special meeting of the Board a written application on a form prescribed by the Board. The application shall be accompanied by a fee to be set by the Board pursuant to § 54-1.28 § 54.1-201 of the Code of Virginia ; shall set forth . The application shall contain information of the knowledge, skills, abilities, and financial position of the applicant, and shall contain an affidavit regarding the correctness of its contents. It shall be the responsibility of the Board to ascertain whether the past performance record of an applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purposes and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter.

If the application is satisfactory to the Board, the applicant may be required by Board

regulations to take an oral or written examination to determine his qualifications ~~when required by the rules and regulations of the Board~~ . If an applicant is deemed to have met or exceeded the entry criteria established by the ~~rules and Board regulations of the Board~~ , a license to engage as a Class A contractor in this Commonwealth shall be issued. The Board may grant a Class A license in any of the following specialty classifications: (i) building contractor, (ii) highway/heavy contractor, (iii) services contractor, (iv) special services-electrical contractor, (v) special services-plumbing contractor, (vi) special services-HVAC contractor, and (vii) special services-HVAC (refrigeration) contractor.

Drafting Note: No change in the law.

§ 54.1-1107. ~~§ 54-120.2.~~ Temporary Class A licenses.—The Board may issue a temporary license to engage as a contractor to any person subject to ~~the rules and Board regulations of the Board~~ . The Board may require ~~such any information as is included requested~~ on the application for a Class A license as is necessary for the Board to determine ~~that whether~~ the applicant is able to complete satisfactorily any contract ~~to be~~ undertaken under authority of ~~such a~~ temporary Class A license.

Drafting Note: No change in the law.

§ 54.1-1108. ~~§ 54-120.3.~~ Application for Class B *license registration* ; fees and issuance.—Any person desiring to be ~~licensed registered~~ as a Class B contractor ~~as defined in § 54-113~~ shall file with the Director an application on a form prescribed by the Board. The Board shall require the applicant to furnish the name, place of business, place of residence, the name of the registered agent, where applicable, and evidence of holding a current local license pursuant to local ordinances adopted pursuant to ~~§ 54-145.2 § 54.1-1117~~ . In addition, if the applicant is a member of a partnership, the applicant shall furnish to the Board, and shall keep the Board advised thereafter, of the names and addresses of all partners. If the applicant is a corporation, or becomes a corporation, it shall furnish to the Board the name and address of all officers and directors of the corporation, and the name and address of any shareholder owning twenty-five percent or more of its capital stock. The applicant shall thereafter keep the Board advised of any changes in the applicant's name, trade name, partners, or, if a corporation, the names of anyone owning twenty-five percent or more of its capital stock. No examination shall be required by the Board for a Class B ~~license~~ ; ~~however, such registration. The license registration will permit the applicant to engage in contracting only in the counties, cities and towns where such person has complied with all local licensing requirements and for the type of work to be performed. The application shall be accompanied by a Class B license registration fee as set by the Board pursuant to § 54-1.28 § 54.1-201~~ .

Drafting Note: References to Class B licenses were changed to registration. This conforms with the definition of "licensure" and "registration" in the general provisions of the subtitle. Appropriate changes have been made throughout the chapter.

§ 54.1-1109. ~~§ 54-131.~~ Expiration and renewal of license *or registration* .—A license *or registration* issued pursuant to this chapter shall expire ~~at a time to be set by the Board in its rules and as provided in Board regulations~~ and shall become invalid on that date unless renewed, subject to the approval of the Board. Application for renewal of ~~such a license on a form prescribed by the Board or registration may be made at a time to be set as provided by the Board in its rules and regulations. Such~~ The application shall be accompanied by a fee ~~to be set by the Board pursuant to § 54-1.28 § 54.1-201 of the Code of Virginia.~~

Drafting Note: Added "registration" to allow for renewal of registration.

§ 54.1-1110. ~~§ 54-132.1.~~ Grounds for *denial or* revocation of license ; ~~denial of or~~ registration.—The Board shall have the power to revoke the license *or registration* of any contractor who is found guilty of:

1. Any willful substantial misrepresentation in obtaining or renewing the license;
2. Furnishing substantially inaccurate or incomplete financial information to the Board;
3. Gross negligence or continued incompetence or misconduct in the practice of his profession;
4. Failure to comply with the ~~Virginia~~ Uniform Statewide Building Code. Two or more convictions for violations of the Uniform Statewide Building Code by a court of competent jurisdiction within a twelve-month period shall be prima facie evidence of willful failure to comply with the Uniform Statewide Building Code; *or*
5. Willful violation or cooperation with others to violate any of the provisions of this chapter or regulations of the Board.

The Board may refuse to issue a license or registration to any contractor who is shown to have a substantial identity of interest with a contractor whose license or registration has been revoked or not renewed by the Board. A substantial identity of interest is defined to include includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or registration has been revoked or nonrenewed or (ii) substantially identical principals or officers.

Drafting Note: Amended to provide for denial or revocation of registration. Otherwise, no change in the law.

~~§ 54.1-1111. § 54-138.~~ Prerequisites to obtaining building, etc., permit.—Any person upon making application applying to the building inspector or such any other authority of any incorporated a city, county or town ; or other political subdivision in this State Commonwealth , charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall ; before being entitled to the issuance of such permit, either furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that such applicant he is duly licensed or registered under the terms of this chapter to carry out or superintend the same , or (ii) file a written statement, supported by an affidavit, that the applicant he is not subject to licensure or registration as a contractor or subcontractor as defined in § 54-113 of pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license required by § 58-298 of the Code of Virginia, and of any city, county ; or town ; or other political subdivision thereof, have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for such the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished evidence of being either exempt from the provisions of this chapter or is duly licensed or registered under this chapter to carry out or superintend the work for which such permits have been applied and further that the applicant has paid the state business license pursuant to § 58-298 of the Code of Virginia then in force so as to be qualified to bid upon or contract for the work covered by the permit .

Such The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.

Drafting Note: Section 58-298 referred to in current § 54-138 was repealed in 1982, effective January 1, 1983. Other than the removal of references to § 58-298, there was no change in the law.

~~§ 54.1-1112. § 54-130.~~ Invitations to bid and specifications must to refer to law.—All architects and engineers preparing plans and specifications for work to be contracted in Virginia shall include in their invitations to the bidder and in their specifications a reference to this chapter so as to convey to the invited bidder ; prior to the consideration of the bid (i) whether such person is a resident or nonresident of this State and Commonwealth, (ii) whether the bidder has been registered or the proper license has been issued to such the bidder or not , and (iii) the information that it will be necessary for such required of the bidder to show evidence of the proper license licensure or registration under the provisions of this chapter before such bid is considered .

Drafting Note: No change in the law.

~~§ 54.1-1113. § 54-140.~~ Nonresident bidders must to appoint statutory agent for service of process.—Before any nonresident person or any foreign corporation ; shall bid bids on any work in this State Commonwealth , such the nonresident person or any foreign corporation shall , by written power of attorney, shall appoint the Secretary of the Commonwealth the Director as his agent of such nonresident person or any foreign corporation upon whom all lawful process against or notice to such nonresident person or any foreign corporation may be served, and who shall be authorized authorize the Director to enter an appearance in on his behalf of such nonresident person or any foreign corporation . Upon the filing of such the power of attorney the provisions of §§ 13.1-109 13.1-763 through 13.1-111 13.1-766 , with reference to service of process and notice, and judgments, decrees and orders entered therein , shall be applicable as to such nonresident person or any foreign corporation.

Drafting Note: Provided that the Director of the Department of Commerce, instead of the Secretary of the Commonwealth, be appointed as agent at the direction of the Virginia Code Commission. Otherwise, there was no change in the law.

~~§ 54.1-1114. § 54-133.~~ Filing and hearing of charges.—Any person may prefer charges file complaints against any contractor licensed hereunder or registered pursuant to this chapter . The Director shall investigate such charges complaints and the Board may take appropriate disciplinary action if warranted. Disciplinary proceedings shall be conducted in accordance with the Administrative Process Act ; (§ 9-6.14:1 et seq.) and §§ 54-872.1 and 54-872.2 . The Board

shall immediately notify the Secretary of the Commonwealth, Director and the clerk ; and the building official of each incorporated city, town county or county town in the State Commonwealth of its findings in the case of the revocation of a license or registration or of the reissuance of a revoked license or registration .

Drafting Note: Sections 54-872.1 and 54-872.2 referenced in this section were repealed in 1979. Secretary of the Commonwealth was changed to Director. There was no change in the law.

§ 54.1-1115. § 54-142. Penalty for violation of chapter; proceeding in equity *Prohibited acts* .—
A. Any person, firm, association, corporation or other entity that engages in any of The following acts shall be deemed guilty of a Class 1 misdemeanor are prohibited :

1. Contracting for, or bidding upon the construction, removal, repair or improvements to or upon real property owned, controlled or leased by another person without a license issued pursuant to this chapter or registration .

2. Attempting to practice contracting in this Commonwealth, except as provided for in this chapter.

3. Presenting or attempting to use the license or registration of another.

4. Giving false or forged evidence of any kind to the Board or any member thereof in an application for the issuance or renewal of a license or registration .

5. Impersonating another or using an expired or revoked license or registration .

6. Receiving or considering ; as the awarding authority a bid from anyone not properly licensed or registered under this chapter.

B. In addition to the provisions of subsection A of this section or any other existing remedy at law, the Board may institute proceedings in equity in the courts of record to enjoin any person, firm, association, corporation or other entity violating the provisions of this chapter.

C. B. Any person who undertakes any work without a valid license or proper registration when such a license or registration is required by this chapter may ; in addition to the authorized penalties for the commission of a Class 1 misdemeanor, be fined an amount not to exceed \$200 per day for each day that such person is in violation.

D. C. No person shall be entitled to assert the lack of licensure or registration as required by this article chapter as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the licensure and registration requirements of this article chapter .

Drafting Note: The Director has the same power in proposed § 54.1-111 pertaining to proceedings in equity given the Board here in Subsection B. Subsection B will be deleted to be consistent with the action taken on a similar provision in the boxing and wrestling chapter which was stricken by the Virginia Code Commission. There has been no other change in the law.

§ 54.1-1116. § 54-144. Investigation of violations.—All alleged violations of this chapter when reported to the Director and duly substantiated by affidavits ; or other satisfactory evidence ; shall be investigated by the Director. The Director may employ special investigators who shall be paid out of funds appropriated to the Board as provided in § 54.1-306 . If the evidence of violations is substantiated, the Board shall report the same to the attorneys for the Commonwealth of the cities or counties in which the violations are alleged to have occurred.

Drafting Note: No change in the law.

§ 54.1-1117. § 54-145.2. Licensing of certain contractors by cities, counties ; cities and towns; qualifications and procedure; registration of certain persons engaged in business of home improvement.—A. 1. The Except as to contractors currently licensed under the provisions of § 54.1-1106, the governing body of every city, county ; city or town shall have the power and authority to adopt ordinances, not inconsistent with the provisions of this chapter, requiring every person who engages in, or offers to engage in, the business of home improvement, electrical, plumbing or heating or air conditioning contracting or the business of constructing single - or multi-family dwellings, in such city, county ; city, or town, to obtain a license from such city, county ; city or town ; except, however, such contractors examined and currently licensed under the provisions of § 54-120.1 .

2. B. The governing body of every city, county ; city or town adopting ordinances pursuant to this section may require every applicant for such license, other than those currently licensed

under the provisions of ~~§ 54-120.1~~ § 54.1-1106 , (i) to furnish evidence of his ability and proficiency; ~~may require the~~ and (ii) to successfully complete an examination of every such applicant, other than those currently licensed under the provisions of ~~§ 54-120.1~~, to determine his qualifications ; . The governing body may designate or establish an agent or board for the county, and ~~prescribe establish~~ the procedures therefor, to examine and determine, for an examination according to the standards set forth in this chapter and such standards as may be established by ~~in the regulations of~~ the State Board for Contractors pursuant to the provisions of this chapter; may refuse to grant a license to any person, other than those . Except contractors currently licensed under the provisions of ~~§ 54-120.1~~ § 54.1-1106 , licensure may be refused to any person found not to be qualified ; and may require any such licensee to furnish bond, except those contractors currently licensed under the provisions of ~~§ 54-120.1~~, . Persons not currently licensed pursuant to § 54.1-1106 may be required to furnish bond in such a reasonable penal sum, with such reasonable condition, and with such surety as such the governing body may deem ~~deems~~ necessary and proper ; and . The governing body may provide for the punishment of violations of such ordinances, provided ; that no such punishment shall exceed that provided for misdemeanors generally.

3. C. For the purpose of this section the business of home improvement shall mean the contracting for and/or providing labor and material or labor only for repairs, improvements, and additions to residential buildings or structures accessory thereto where any payment of money or other thing of value is required.

~~B. [Repealed.]~~

Drafting Note: No change in the law.

Article 2.

Virginia Contractor Transaction Recovery Act.

§ 54-145.3. Short title. This article shall be known as the “Virginia Contractor Transaction Recovery Act” and is hereinafter referred to as “this act.”

Drafting Note: This section is being repealed and a definition for “act” added to the definitional section.

§ 54.1-1118. § 54-145.3:1. Definitions.—As used in this article ; unless the context requires otherwise a different meaning :

“Act” means the Virginia Contractor Transaction Recovery Act.

“Board” means the State Board for Contractors.

“Claimant” means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this act.

“Fund” means the Contractors Transaction Recovery Fund.

“Director” means the Director of the Department of Commerce.

“Regulant” means any person, firm, corporation, association, partnership, joint venture or any other legal entity licensed by the State Board for Contractors.

“Improper or dishonest conduct” includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term “improper or dishonest conduct” does not include mere breach of contract.

“Regulant” means any person, firm, corporation, association, partnership, joint venture or any other legal entity licensed or registered by the Board for Contractors.

Drafting Note: A definition of “act” was added so that current § 54-145.3 could be repealed. The terms were arranged in alphabetical order. The definitions for “Board” and “Director” were deleted since they are included in proposed § 54.1-1100. This act was amended by the 1987 General Assembly.

§ 54.1-1119. § 54-145.3:2. Assessments by Director; assignment to fund; minimum balance; notice; penalties; costs of administration.—A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, which shall be specifically assigned to the fund. Such Initial payments may be incorporated in any application fee payment and transferred to the fund by the

Director within thirty days.

All assessments, except initial assessments, for the fund shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of FDIC and FSLIC insurance, shall be secured under the Security for Public Deposits Act (§ 2.1-359 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of subdivisions (1), (2) and (4) of § 26-40, and in repurchase agreements secured by obligations of the United States government or any agency thereof. The Director shall maintain in ~~the Director's offices~~ *his office* an accurate record of all transactions involving the fund. This record shall be open for inspection and copying by the public during the normal business hours of the Director.

B. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than this minimum balance, the Director shall ~~forthwith~~ *immediately* inform the Board, which shall within thirty days of this determination assess each regulant a sum sufficient *to bring the balance of the fund to an amount of not less than \$400,000*, when combined with similar assessments of other ~~licensees~~, *to bring the balance of the fund to an amount of not less than \$400,000 regulants*. No regulant shall be assessed a total amount of more than fifty dollars during any *license or registration* period or part thereof.

Notice to regulants of these assessments shall be by ~~first-class~~ *first class* mail, and payment of such assessments shall be made by ~~first-class~~ *first class* mail *addressed* to the Director within forty-five days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within forty-five days of such mailing, the Director shall notify such regulant by ~~first-class~~ *first class* mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the *license or registration* of the regulant shall be automatically suspended. This *license or registration* shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the fund shall be used for administering the fund. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.) or shall accrue to the fund.

Drafting Note: No change in the law.

§ 54.1-1120 § 54-145.3:3 . Recovery from fund generally.—Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct and such conduct occurred (i) during a period when such individual or entity was a regulant contracting within its *license or registration* category (Class A or Class B), and (ii) in connection with a transaction involving contracting as defined in § 54-113 , the claimant may file a verified claim with the Director to obtain a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. ~~Such~~ A verified claim shall be filed with the Director no later than six months after the judgment ~~becomes~~ *became* final. Such verified claim shall be accompanied by the copies of the order for the underlying judgment, and evidence of compliance with subdivisions 6 and 7 below.

4. The claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence(s).

5. The claimant shall not himself be (i) an employee of such judgment debtor, (ii) vendor of

such judgment debtor, (iii) another licensee, (iv) the spouse or child of such judgment debtor nor the employee of such spouse or child, or (v) any financial or lending institution nor anyone whose business involves the construction or development of real property.

6. No directive ordering payment from the fund shall be entered unless and until the claimant has filed with the Director a verified claim containing the following statements:

a. That the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment.

b. Describing the assets disclosed by such interrogatories.

c. That all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom.

d. The balance remaining due the claimant after the sale or application of such assets.

7. If the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523(a) and obtain an order determining dischargeability of debt.

Drafting Note: No change in the law.

§ 54.1-1121. § 54-145.3:3.1. Investigations.—Upon receipt of the notice of proceedings against the regulant, the Board may cause its own investigation to be conducted.

Drafting Note: No change in the law.

§ 54.1-1122. § 54-145.3:4. Consideration of applications for payment.—The Board shall promptly consider the verified claim of the claimant administratively.

If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment from the fund to the claimant the amount remaining unpaid on the judgment, subject to the limitations set forth in § 54-145.3:5 § 54.1-1123 . The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 9-6.14:16 of the Administrative Process Act (§ 9-6.14:1 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

Drafting Note: No change in the law.

§ 54.1-1123 § 54-145.3:5 . Limitations upon recovery from fund; certain actions not a bar to recovery.—A. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting as defined in § 54-113 , is limited to \$10,000, regardless of the amount of the unpaid judgment of the claimant .

B. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting as defined in § 54-113 , is limited by the Board to \$20,000 during any license period. If a claim has been made against the fund, and the Board has reason to believe there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds \$20,000, during a license or registration period, \$20,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their unpaid judgments against the regulant remaining unpaid .

C. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based shall be any sums representing interest, or punitive or exemplary damages. Such claim against the fund may include court costs and attorneys' fees.

D. If, at any time, the amount of the fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions 1 and 2 of § 54-143.3:3 § 54.1-1120 and the provisions of § 54-145.3:6 § 54.1-1124 shall not be a bar to recovery under this act if the claimant is otherwise entitled to such recovery.

Drafting Note: No change in the law.

§ 54.1-1124 § 54-145.3:6 . Participation by Board or Director in proceeding.—Upon service of process as provided in subdivision 1 of § 54-145.3:3 § 54.1-1120 , the Board, the Director, or duly authorized representatives of the Board shall then have the right to request leave of court to intervene.

Drafting Note: No change in the law.

§ 54.1-1125 § 54-145.3:7 . Assignment of claimant's rights to Board; payment of claim.—Subject to the provisions of § 54-145.3:5 § 54.1-1123 upon the claimant's execution and delivery to the Director of an assignment to the Board of his rights against the regulant, to the extent he received satisfaction from the fund, the Director shall pay the claimant from the fund the amount ordered by the Board.

Drafting Note: No change in the law.

§ 54.1-1126 § 54-145.3:8 . Revocation of license or registration upon payment from fund.—Upon payment by the Director to a claimant from the fund as provided in § 54-145.3:7 § 54.1-1125 , the Board shall immediately revoke the license or registration of the regulant whose improper or dishonest conduct resulted in this payment. Any regulant whose license or registration is revoked shall not be eligible to apply for a license or registration as a contractor until the regulant has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment.

Drafting Note: No change in the law.

§ 54.1-1127 § 54-145.3:9 . No waiver by Board of disciplinary action against regulant.—Nothing contained in this article *This article shall not* limit the authority of the Board to take disciplinary action against any regulant for any violation of Title 54 54.1 of the Code of Virginia or the rules and regulations of the Board ; ~~nor shall full~~ . Full repayment of the amount paid from the fund on a regulant's account *shall not* nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

Drafting Note: No change in the law.

CHAPTER 12.

COSMETOLOGISTS.

§ 54.1-1200 § 54-112.2 . Definitions.—As used in this chapter *unless the context requires a different meaning* :

"Board" means the Board for Cosmetology.

(1) "Cosmetic" means any external application of substance intended to beautify and improve the complexion, skin, nails or hair.

(2) [Repealed.]

(3) "Cosmetologist" means any person ; ~~whether~~ licensed under this chapter or not, who uses cosmetics, administers cosmetic treatments, or cuts, curls, *treats* or dresses human hair and practices cosmetology for compensation.

(4) "Cosmetology salon" means any place or establishment licensed by the Board for the practice of cosmetology for compensation and may include the training of apprentices under regulations of the Board.

(5) "Cosmetology" means and includes, but otherwise is not limited to, the following or any one of a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon the human hair of any person , or a wig or hairpiece of any person , by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece ; ~~or by manicuring or pedicuring the nails of any person~~ .

"Cosmetology instructor" means a licensed cosmetologist who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board.

“Cosmetology salon” means any place or establishment licensed by the Board for the practice of cosmetology for compensation and may include the training of apprentices under regulations of the Board.

~~(6)~~ “School of cosmetology” means a place or establishment licensed by the Board to accept and train students. The Board shall approve the cosmetology curriculum.

~~(7)~~ “Board” as used in this chapter shall mean the Virginia Board of Cosmetology.

~~(8)~~ “Cosmetology instructor” means a licensed cosmetologist who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board.

Drafting Note: The terms were rearranged in alphabetical order. The Virginia Code Commission decided to delete references to cosmetics and the treatment of skin and nails.

~~§ 54.1-1201 § 54-112.1 . When chapter not applicable Exemptions .-~~ Nothing in A. The provisions of this chapter shall *not* apply to:

~~(1)~~ 1. Barbers licensed under the provisions of Chapter 4.1 (~~§ 54-83.2 et seq.~~) 6 (~~§ 54.1-600 et seq.~~) of this title, except that the Board, by regulation, may provide for credit to barbers or to students in barber school for education or training when such a person applies to be licensed as a cosmetologist.

~~(2)~~ 2. Gratuitous service as a cosmetologist.

~~(3)~~ 3. Students enrolled in an approved school taking a course in cosmetology.

~~(4), (5)~~ [Repealed.]

~~(6)~~ 4. Persons working in a cosmetology salon whose duties are expressly confined to the shampooing and cleansing of human hair under the direct supervision of a cosmetologist ; ~~or persons whose duties are expressly limited to manicuring fingernails under the direct supervision of a cosmetologist .~~

~~(7)~~ 5. Apprentices serving in a cosmetology salon licensed by the Board in accordance with the Board regulations promulgated by the Board .

~~(8)~~ 6. Schools of cosmetology in public schools teaching the cosmetology curriculum approved by the Board.

~~§ 54-112.20. Persons confined in certain institutions exempt from payment of fees. B. The payment of fees provided required or authorized by this chapter shall not apply to any person confined in an institution operated by the Department of Corrections.~~

Drafting Note: Current §§ 54-112.1 and 54-112.29 were combined into one section.

~~§ 54.1-1202. § 54-112.4:2. Board of Examiners of Professional Hairdressers continued as Virginia Board of for Cosmetology ; number, appointments and terms membership; officers; meeting .-~~ The Virginia State Board of Examiners of Professional Hairdressers is continued and shall hereafter be known as the Virginia The Board of for Cosmetology . The Board shall be composed of seven members , who shall be appointed by the Governor for terms of four years. ~~shall serve for four-year terms.~~

~~§ 54-112.7. Chairman, vice chairman. There shall be a A chairman and a vice-chairman ; each of whom shall be elected annually by the Board from its own members membership .~~

~~§ 54-112.8. Time and place of meetings; quorum. The Board shall hold its annual meeting in April of each year in the City of Richmond, Virginia. The Board may hold such other meetings at such times and places and upon such notice as the Board may determine and as its business may require as deemed necessary by the Board . Four members of the Board shall constitute a quorum for the transaction of business.~~

Drafting Note: Current §§ 54-112.4:2, 54-112.7 and 54-112.8 were combined into one section. The name of the Board was changed at the direction of the Virginia Code Commission.

~~§ 54.1-1203 § 54-112.3 . License required.- No person except Except as provided in § 54-112.1 of this Code subsection A of § 54.1-1201, no person shall practice or offer to practice as a cosmetologist unless that person is the holder of without a license as provided in accordance with required by this chapter and the regulations of the Board.~~

Drafting Note: No change in the law.

§ 54.1-1204 § 54-112.3:1 . Temporary licenses.—The Board may issue a temporary license to engage in cosmetology to any person who is eligible for examination. Persons issued a temporary license shall be subject to the Board regulations of the Board .

The Board shall promulgate regulations consistent with this section to permit individuals to be granted temporary licenses for a specified period of time. Such The regulations shall provide for issuance of a temporary license only until the holder sits for the next examination for which he is eligible and the results reported.

Drafting Note: No change in the law.

§ 54.1-1205 § 54-112.26 . License required for cosmetology salon.—No person, firm or corporation shall operate or attempt to operate a cosmetology salon unless licensed by the Board pursuant to its regulations.

Drafting Note: No change in the law.

§ 54.1-1206 § 54-112.26:1 . License required for schools of cosmetology.— No Except as provided in subsection A of § 54.1-1201, no person, firm or corporation shall operate or attempt to operate a school of cosmetology, unless licensed by the Board pursuant to its regulations ; except as provided in § 54-112.1 of this Code . The provisions of § 54-1.20 A 7 subdivision A 8 of § 54.1-111 shall not apply to regulations promulgated by the Board for the regulation of a school of cosmetology as defined in § 54-112.2 (6) .

Drafting Note: No change in the law.

§ 54.1-1207 § 54-112.26:2 . Inspections.—The Board shall ensure that the salons and cosmetology schools which it licenses are inspected with regard to the health and safety of the public.

Drafting Note: No change in the law.

CHAPTER 13.

EMPLOYMENT AGENCIES.

§ 54.1-1300 § 54-872.16 . Definitions ; exemptions .—A. As used in this chapter unless the context requires a different meaning :

(1) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from or on behalf of any person seeking employment or employees in payment for any service, either directly or indirectly.

(1a) "Person" means any individual, firm, corporation, partnership, association or business entity.

(2) "Employer" means any person employing or seeking to employ any employee.

"Board" means the Board of Commerce.

"Controlling person" means each of the following of any employment agency: partner, officer, director, holder of more than twenty percent of the stock, and person employed to direct, operate or manage the business.

"Department" means the Department of Commerce.

(3)"Employee" means any individual performing or seeking to perform work or service of any kind for hire.

"Employer" means any person employing or seeking to employ any employee.

(4)"Employment agency" means any person who shall advertise advertises through any means for the purpose of assigning or directing a person to some other employer to work and charges any fee or commission for such service. This chapter shall not apply to (a) persons engaged exclusively in the business of providing part-time or temporary personnel or business

services to or for others and under their direction so long as the individuals provided to perform such services remain for all purposes the employee of such persons; (b) migratory farm labor where otherwise provided for by law; (c) fee-paid agencies where the employee placement fee is paid by the employer and there is no liability on the part of the applicant; and (d) services that involve an injured employee, as defined by § 65.1-4, which services are essentially rehabilitative in nature and where fees are paid by a third party and there is no liability on the part of the employee.

(5) "Controlling person" means each of the following of any employment agency: partner, officer, director, holder of more than twenty percent of the stock, and person employed to direct, operate or manage the business.

(6) "Department" means the Department of Commerce.

(7) "Board" means the Board of Commerce.

B. The provisions of this chapter shall not apply to the employment agencies defined in paragraphs (4) (a), (4) (b), (4) (c) and (4) (d) in subsection A of this section.

"Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from or on behalf of (i) any person seeking employment, or (ii) employees in payment for any service, either directly or indirectly.

"Person" means any individual, firm, corporation, partnership, association or business entity.

Drafting Note: The terms were rearranged alphabetically. Exemptions were removed and placed in a separate section.

§ 54.1-1301. Exemptions.—The provisions of this chapter shall not apply to:

1. Persons engaged exclusively in the business of providing part-time or temporary personnel or business services to or for others and under their direction so long as the individuals provided to perform such services remain for all purposes the employee of such persons;

2. Migratory farm labor otherwise provided for by law;

3. Fee-paid agencies where the employee placement fee is paid by the employer and there is no liability on the part of the applicant; and

4. Services that involve an injured employee, as defined by § 65.1-4, which services are essentially rehabilitative in nature and where fees are paid by a third party and there is no liability on the part of the employee.

Drafting Note: These exemptions were previously found in the definitional section.

§ 54.1-1302 § 54-872.23:1 . Duties of Board.— It shall be the duty of the The Board to shall advise and make recommendations to the Department with respect to all matters relating to employment agencies in the Commonwealth. The Board may conduct research on matters pertaining to the operation and conduct of employment agencies and matters related thereto in this Commonwealth, and make such recommendations as the Board deems necessary to the Department. The Board shall adopt regulations establishing necessary to carry out the purposes of this chapter and establish fees for initial application and renewal of licenses issued pursuant to this chapter. In establishing fees, the Board shall be guided by § 54-1.28:1.

Drafting Note: Current § 54-872.18 was incorporated into this section.

§ 54-872.18. Rules and regulations. The Board may make such rules and regulations as may be necessary to carry out the purposes of this article, Chapter 1-1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code shall apply to the adoption of rules and regulations under this section and to proceedings before the Board.

Drafting Note: The provisions of this section were included in proposed § 54.1-1302.

§ 54.1-1303 § 54-872.17 . Licenses; bond.—A. No Unless exempted by § 54.1-1301, no employment agency ; except those as defined in paragraph (4) (c) of subsection A of § 54-872.16, shall do business in the Commonwealth without first having obtained an employment agency license from the Department. The license shall not be transferred or assigned and is valid only with respect to the person to whom it is issued.

The application shall be in such form as may be prescribed by the Department and it may require the furnishing of such information by the applicant as that will enable the Department

to determine whether the applicant for license licensure and each controlling person are qualified to comply with requirements of this article chapter .

B. The Department shall ~~cause an investigation to be made of~~ *investigate* each applicant and each controlling person. No license shall be granted to any applicant if ~~any~~ *unless the* controlling person or ~~that the applicant is not at least at least~~ *at least* eighteen years of age, and of good moral character ~~or~~ . *In addition, no license shall be granted if* the applicant or any controlling person has failed to comply with the provisions of this article chapter , or if the applicant or any controlling person has been convicted of a felony or had any prior license to do business revoked for fraud, misrepresentation, or any other act that would constitute a violation of ~~§ 54-872.24~~ of this article chapter . No license shall be granted to conduct an employment agency ~~without~~ *unless that employment agency has* an office in this Commonwealth consisting of at least a ~~one room or rooms~~ furnished as an office.

Whenever there is any change in the controlling persons of any employment agency, the employment agency shall , ~~within thirty days after such change,~~ notify the Department *within thirty days of such change* and furnish ~~such~~ information relating to the new controlling person as ~~the prescribed by Department may by regulation prescribe~~ . The Department shall thereafter ~~cause an investigation to be made of such~~ *investigate the* controlling person, and if ~~such~~ the controlling person does not meet the requirements of this subsection the Department shall , unless such person ceases to be a controlling person, *shall* revoke the license of the employment agency.

The Department shall act on each application and notification respecting a controlling person within sixty days from the date ~~such the~~ application or notification is filed, and the applicant shall be promptly notified of such action. ~~Any person aggrieved by the action of the Department shall have a right of hearing and appeal in accordance with Chapter 1-1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia .~~

C. No employment agency, ~~except those as defined in paragraph (4) (c) of subsection A of § 54-872.16,~~ *Unless exempted by § 54.1-1301,* no employment agency shall engage in business in this Commonwealth until it first deposits with the Department a bond in the penal sum of \$5,000 for each location to be operated in this Commonwealth . *The bond shall be signed by the applicant for licensure as principal and by a surety company authorized to do business in this Commonwealth as surety ; . It shall be payable to the Commonwealth of Virginia as obligee and conditioned on the compliance of such employment agency with the provisions of this article chapter , and the payment by such employment agency of all damages occasioned to any person by reason of any misstatement, misrepresentations misrepresentation , fraud or deceit forbidden by this article chapter of such employment agency or its agents or employees .*

Drafting Note: No change in the law. The stricken language in the last paragraph of Subsection B duplicates proposed § 54.1-109.

~~§ 54.1-1304 § 54-872.20 .~~ Schedule of placement fees; contracts or agreements; prohibited fees and documents; refunds; receipt for payment.—A. Every employment agency in the Commonwealth shall file with the Department a schedule of placement fees to be charged to applicants. ~~Such fees~~ *Fees* may be changed by filing an amended schedule, showing ~~such~~ changes at least thirty days before the changes are to become effective. It shall be unlawful to charge, demand, or receive a greater placement fee than is specified in the latest schedule filed with the Department.

B. When any contract or agreement is made between a person seeking employment and an employment agency, ~~such the~~ contract or agreement shall be in writing. The gross amount of any fee charged, together with the duration of time upon which ~~such the~~ fee is based, shall be specifically set out in ~~such the~~ contract or agreement in bold letters enclosed within a conspicuous border. A copy of ~~such the~~ contract or agreement shall be delivered to the applicant at the time ~~such the~~ contract or agreement is entered into. The Department shall have authority to prescribe the form of ~~such the~~ contract or agreement.

C. No agency shall charge any applicant a registration fee or collect in advance from any applicant any payment for service to be rendered to ~~such the~~ applicant in obtaining employment. ~~D.~~ No agency shall charge an applicant a fee unless the agency has made an appointment with an employer for the applicant.

E. Any attempt by any agency or its representative to collect a placement fee from an applicant who has accepted a job from a company with which the agency did not make an appointment for the applicant shall be considered fraud and grounds for suspension. Charges may be brought by the applicant against the agency and the applicant may request a hearing

before the Department.

~~F. D.~~ No agency as a condition of rendering service to an applicant shall require ~~such~~ *the* applicant to execute any document prior to acceptance of a position which may constitute a promissory note or authorization to confess judgment. Any promissory note executed by a person in consideration of an employment agency finding such person employment shall not be held in due course for a period of 120 days after commencement of employment even though the holder during that period meets all the requirements set out in § 8.3-302 of the Code of Virginia.

~~G. E.~~ Employment shall be considered ~~to be~~ temporary when within twelve weeks after employment commences ~~that the~~ employment is terminated by the employer through no fault of the applicant or voluntarily by the applicant if the job is not as represented to the applicant. In such event the employment agency making the placement shall refund to the applicant the portion of the placement fee that exceeds one-twelfth of that fee for each week or portion thereof that the employment continued.

~~H. F.~~ If an employer agrees to pay an agency fee but through no fault ~~to~~ of the applicant does not, the agency shall have a right ~~to~~ of action against the employer, but not the applicant.

~~I. G.~~ Every employment agency shall give to every applicant a numbered receipt for each payment which the agency receives from that applicant. Each receipt shall have printed or written on it the name of the applicant, the date and amount of the payment, the name and address of the employment agency, the purpose for which payment was made, and the signature of the person receiving the payment.

Drafting Note: No change in the law.

§ 54.1-1305 § 54-872.19 . Inspection of premises and records; investigations; nature and contents of records.—To effectuate the purpose of this ~~article~~ *chapter* , the Department shall have authority to inspect the premises and records of each agency, and the records of each applicant, which are essential to the operation of the agency. The Department shall also have authority to subpoena records and witnesses in the course of an investigation of an employment agency or applicant for licensure under this ~~article~~ *chapter* . Every employment agency shall keep and make available to the Department, at its office ~~within the Commonwealth of Virginia~~, during regular business hours, such records as are required to enable the Department to determine ~~the status of~~ compliance with the provisions of this ~~article~~ *chapter* . All such records shall be kept on file for a ~~period of~~ two years, subject to review by the Department. Records shall include, but not be limited to:

1. The original or duplicate of each application for employment, contract and receipt.
2. The name and address of every applicant for employment from whom a fee is received or to whom a placement fee is charged; the date of application for employment and the date when a fee was received or charged; the amount of fee actually received or charged; where a refund is made, the amount and date thereof; the name and address of the employer by whom the applicant is employed and the agreed upon rate of compensation ~~therefor~~ .
3. All requests for applicant referrals by employers, which shall reflect the date of the request, the name and address of the employer, the rate of compensation, and the terms and conditions of employment.
4. A file of all job advertisements identified by date and publication.

Drafting Note: No change in the law.

§ 54.1-1306 § 54-872.21 . Prohibited acts.—No employment agency doing business in this Commonwealth, or any person employed by or acting as agent for any ~~such~~ employment agency shall:

- ~~(a)~~ 1. Knowingly make referral to any job ~~the conditions of which are in violation of~~ violates federal, state or local law.
- ~~(a1)~~ 2. Refer any applicant to any employer for a position that the employment agency does not know to be open unless the employer specifically requests to see the particular applicant, or without making an appointment for the applicant with the employer.
- ~~(a2)~~ 3. Refer any applicant to any employer for a position for which the employment agency knows the applicant is not qualified.

(b) 4. Advertise a position unless there is on file a bona fide employer order for such position; publish or cause to be published any false, fraudulent or misleading information, representation, promise, notice or advertisement; advertise its service as free if any person assumes any liability or contingent liability for any fees; publish or cause to be published any advertisement or other promotional material which fails to disclose the name and address under which the agency does business.

(c) 5. Send or cause to be sent any applicant to be sent to any place the employment agency knows or reasonably should have known is maintained for immoral or illicit purposes.

(d) 6. Make any false entries in the records required to be kept as herein provided by this chapter .

(d1) 7. Employ any counselor who does not meet the standards required for controlling persons under § 54-872.17 § 54.1-1203 or whom the employment agency knows to be unqualified for that position.

(e) 8. Knowingly induce or attempt to induce an employee to terminate his employment for the purpose of obtaining other employment through such agency. Nothing herein shall be construed as prohibiting prohibit any employment agency from assisting any employee in obtaining other employment if such the agency has been so requested by the employee. No employment agency shall knowingly induce or attempt to induce any employee it has placed for employment to leave that employment unless it is requested to do so by the employee and he shall have has first contacted the employment agency and requested assistance .

(f) 9. Change the location of any office or establish any new office of the agency without giving written notice to the Department.

(g) 10. Secure any a fee from any an applicant after sending or causing to be sent such the applicant to be sent to any an employer , unless there is a bona fide employer order for the position for which the agency makes an the appointment with the employer for such applicant .

Drafting Note: No change in the law.

§ 54.1-1307 § 54-872.22 . No fee or percentage of wages to person, etc., authorized to hire or discharge employees.—No person, firm or corporation, or person employed or authorized by such person, firm or corporation to hire or discharge employees, shall receive any part of any fee or any percentage of wages or any compensation of any kind whatever that is agreed upon to be paid by any employee of such person, firm or corporation for any employment with such person, firm or corporation.

Drafting Note: No change in the law.

§ 54.1-1308 § 54-872.24 . Complaints; notice; investigation; hearing; appeal; injunction.— A. Upon receipt of written complaint against any person or employment agency, the Department shall give reasonable notice thereof to the person or agency by serving upon it either personally, by registered mail, or by leaving it with the person in charge of its office ; . The notice shall consist of a concise statement of the facts constituting the complaint and enumerating enumerate the section of this article chapter alleged to have been violated. The Department shall investigate all such complaints and may refer the complaint to the Board for investigation and recommendation. If it appears that grounds exist for suspension or revocation of a license or other disciplinary action, the Department shall hold a hearing on such the complaint. If after such the hearing the Department is satisfied from the evidence that the agency or licensee has violated or is violating the provisions of this article chapter , it shall be the duty of the Department to shall suspend or revoke its license.

B. Hearings and appeals hereunder shall be in accordance with Chapter 1-1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code.

C. In addition to its other powers the Department may bring actions to enjoin violations of this article or request that criminal proceedings be instituted under § 54-872.25 or § 54-872.26.

Drafting Note: No change in the law. The stricken provisions in Subsection B and C duplicate general provisions pertaining to regulatory boards found in proposed §§ 54.1-109 and 54.1-111.

§ 54-872.25. When violation a misdemeanor; penalty. Any person or employment agency found guilty of a violation of any of the provisions of this article shall, subject to the provisions of § 54-872.26, be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction

shall be fined not to exceed \$1,000 or sentenced to imprisonment not to exceed one year, or both such fine and imprisonment.

Drafting Note: Violations of the chapter are covered by proposed § 54.1-111 in the general provisions section of Chapter 1 in Subtitle I.

§ 54-872.26 . When violation a felony; penalty.—Any person or employment agency which shall knowingly send any help or servants to any place of bad repute, house of ill fame or assignation house or to any house or place kept for immoral purposes, or to any person for immoral purposes, shall be deemed guilty of a felony and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the penitentiary not less than one year nor more than ten years, or by both such fine and imprisonment.

Drafting Note: Current § 54-872.26 sets out violations which constitute a felony. This section will be deleted since the actions prohibited by this section are included in Article 3 (§ 18.2-344 et seq.) of Chapter 8 (Crimes Involving Morals and Decency) of Title 18.2.

CHAPTER 14.

GEOLOGISTS.

§ 54.1-1400 § 54-962 . Definitions.— The following terms, as As used in this chapter , shall have the meanings given in this section unless the context requires a different meaning :

“Board” means the Board for Geology.

“Geologist” means a person engaged in the public practice of geology.

1. *“Geology” means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.*

2. *“Geologist” means a person engaged in the public practice of geology.*

“Practice of geology” means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

3. *“Qualified geologist” mean a means an uncertified person who possesses all the qualifications specified in this chapter for certification except that he is not certified .*

4. *“Virginia certified professional geologist” means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the Board through certification.*

5. *“Practice of geology” means the performance of any service or work for the general public wherein the principles and methods of geology are applied, except as specifically exempted by this chapter.*

6. *“Board” means the Virginia Board of Geology.*

Drafting Note: The terms were placed in alphabetical order.

§ 54.1-1401 § 54-968 . Exemptions and limitations .—A. The certification program set forth in this chapter is voluntary and shall not be construed to prevent or affect the practice of geology by uncertified geologists; however, no person may represent himself as a Virginia certified professional geologist unless he has been so certified by the Board.

B. This chapter shall not be construed to prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law, including the practice of licensed professional engineers lawfully practicing engineering in its various specialized branches.

Drafting Note: No change in the law.

§ 54.1-1402 § 54-963 . Creation of Board and membership ; officers; quorum .— There is hereby created the Virginia The Board of for Geology ; which shall administer the provisions of this chapter. The Board shall be composed of five members as follows: three geologists of varied geological backgrounds and two citizen members , to be appointed by and serve at the pleasure

of the Governor. All vacancies occurring on the Board shall be filled by the Governor. One of the initial appointments shall be for a term of five years, one shall be for a term of four years, one shall be for a term of three years, one shall be for a term of two years, and one shall be for a term of one year. Thereafter, all appointments shall be for a term of five years each, except that appointments to fill vacancies shall be for the appropriate unexpired term. Each member of the Board shall be a citizen of the United States and a resident of Virginia. Each geologist member of the Board shall be a Virginia certified professional geologist under this chapter, except that each geologist initially appointed shall be a qualified geologist. The initial appointment of the geologist members may be made from lists of qualified geologists in Virginia, submitted to the Governor by interested parties in Virginia. A member of the Board shall hold office until his successor is duly named unless he resigns or is removed by the Governor. No person shall be eligible to serve on the Board for more than two successive full terms. Board members shall serve five-year terms. The Board shall elect a chairman from its membership. A quorum of the Board shall consist of not fewer than three members, two of whom shall be geologist members. In addition to the appointed Board members, the State Geologist shall serve as an ex officio member of the Board. The Board shall establish such regulations as necessary for the reasonable administration of this chapter.

Drafting Note: Provisions deleted from current § 54-963 duplicate proposed § 54.1-107 or pertain to initial appointments to the Board in 1981. The name of the Board was changed at the direction of the Virginia Code Commission.

§ 54.1-1403 § 54-964 . Certification ; *minimum qualifications* .- In order to safeguard life, health, property, and the environment and to identify qualified individuals, any A. Any person practicing or offering to practice as a geologist or in a geological specialty in this Commonwealth may submit reasonable evidence to the Board that he is qualified to practice and to be certified as herein provided. The Board shall certify approve the application for certification of any person who, in the opinion of the Board, has satisfactorily met the requirements of this chapter ; who has applied in writing to the Board for certification, and who has paid any applicable fees fixed by the Board.

All certifications *Certifications* shall expire at such interval *intervals* as will be designated by the Board. A certification may be routinely renewed by the Board upon receipt of a formal request accompanied by any applicable fees.

§ 54-965. *Minimum qualifications*.- B. To be eligible for certification as a professional geologist, an applicant shall meet each of the following minimum qualifications:

1. Be of good ethical character.

2. Have a baccalaureate or higher degree from an accredited college or university with either a major in geology, engineering geology, geological engineering, or related geological sciences; or have completed at least thirty semester hours or the equivalent in geological science courses leading to a major in geology. The Board shall waive academic requirements for a person already practicing geology at the time of passage of this chapter, provided application for certification is made not later than July 30, 1984, and the applicant can provide evidence to satisfy the Board that he is competent to practice public geology.

3. Have at least seven years of geological work which shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist, or a minimum of three years of experience in responsible charge of geological work. The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position as determined by the Board. The adequacy of the position and the required supervision and experience shall be determined by the Board in accordance with standards set forth in its regulations adopted by it . The following criteria of education and experience qualify ; as specified, toward accumulation of the required seven years of geological work:

(a) a. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work.

(b) b. The Board may consider in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required above.

4. Successfully pass an appropriate examination approved by the Board and ~~designated~~ *designed* to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

(a) ~~Separate~~ *At the discretion of the Board, separate* examinations may be prepared for various subsections of geology as ~~determined by the Board~~ ; however, there will be no specialty certification, only certification as a professional geologist.

(b) ~~[Repealed.]~~

Drafting Note: Current § 54-964 and 54-965 were combined into one section.

§ 54.1-1404 § 54-966 . Waiver of examination.—The Board shall waive the examination requirement for certification as a professional geologist for an applicant who otherwise meets the requirements of this chapter and who also meets any of the following conditions:

1. ~~Makes written application to the Board not later than one year after adoption of the Code of Ethics.~~

2. ~~1. Makes written application to the Board and who has at least fourteen years of geological work which shall include~~ *includes* the geological work as specified in § 54-965 subsection B of § 54.1-1403 .

3. ~~2. Makes written application to the Board and holds an unexpired certificate of registration, certification, or license to engage in the practice of geology issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.~~

Drafting Note: The provision allowing for the waiver of the examination within one year of the adoption of the Code of Ethics will be deleted since that time frame has passed. There is no change in the law.

§ 54.1-1405 § 54-967 . Professional ethics and conduct.—A. The Board, in coordination with an ad hoc panel of certified professional geologists convened by the Board and representing various geological interests in Virginia, shall ~~cause to have prepared and shall~~ adopt a Code of Professional Ethics and Conduct which shall be published and made known in writing to every Virginia certified professional geologist and applicant for certification under this chapter. The Board may revise and amend this code as needed and shall forthwith notify each certified professional geologist in writing of such revisions or amendments.

B. The full Board, by majority vote, shall have the power to suspend, revoke, or refuse to renew the certification of any professional geologist who, after an appropriate formal hearing, is found to have been involved in:

1. Any fraud or deceit in obtaining certification;

2. Any violation of the Code of Professional Ethics and Conduct or other regulations of the Board;

3. Demonstrated gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist; or

4. Any conviction of a felony which in the opinion of the Board would adversely affect the practice of geology.

~~At any hearing, the accused certified professional geologist shall have the right to appear personally, to be represented by counsel, to cross-examine witnesses appearing against him, to challenge evidence against him, and to produce evidence and witnesses in his own defense.~~

C. The Board, by majority vote of the quorum, may reinstate a revoked or suspended certification to any professional geologist who makes written application to the Board showing good cause for such action.

Drafting Note: No change in the law. The Administrative Process Act governs hearings conducted by the Board, so provisions pertaining to the Board hearings will be deleted.

CHAPTER 15.

HEARING AID SPECIALISTS.

§ 54.1-1500. § 54-524.110. Definitions.— As used in this chapter , except as unless the context may require otherwise requires a different meaning :

(a) "License" shall mean a license issued by this State under this chapter to hearing aid dealers and fitters.

(b) "Temporary permit" shall mean a permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.

(c) "Board" shall mean means the Virginia Board of for Hearing Aid Dealers and Fitters , as created by this chapter Specialists .

(d) "Hearing aid" shall mean means any wearable instrument or device designed for or offered for the purpose of aiding or compensating to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmold earmolds , but excluding batteries and cords.

"License" means a license issued under this chapter to hearing aid specialists.

(e) "Practice of fitting and dealing in hearing aids" shall mean means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations or sale of hearing aids . The term also includes , (ii) the sale of hearing aids and (iii) the making of impressions for earmolds. A dealer practitioner , at the request of a physician or a member of a related professions profession , may make audiograms for the professional's use in consultation with the hard-of-hearing.

(f) "Sell" or "sale" shall mean means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers practitioners .

"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist .

Drafting Note: The definitional section was arranged in alphabetical order, the name of the Board of Hearing Aid Dealers and Fitters was changed to the Board for Hearing Aid Specialists and the term "hearing aid dealer and fitter" was changed to "hearing aid specialist." The definition of "practice of fitting and dealing in hearing aids" was revised to make it clear that the definition includes the sale of hearing aids.

§ 54.1-1501. § 54-524.111. License required; exemption Exemptions ; sale of hearing aids by corporations, etc. , measuring hearing. — (a) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and sale of hearing aids after January 1, 1971, unless he holds an unsuspended, unrevoked license issued by the Board as provided in this chapter.

(b) A. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license under this chapter.

(c) B. Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs only properly licensed natural persons practitioners in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations or other like organizations shall file annually with the Board a list of all licensed hearing aid dealers and fitters specialists directly or indirectly employed by it. Such The organization shall also file with the Board a statement on a form approved by the Board that they submit themselves to it will comply with the rules and regulations of the Board and the applicable provisions of this chapter which the Board shall deem applicable to them .

C. Nothing in this chapter shall prohibit any person who does not sell hearing aids or accessories or who is not employed by an organization which sells hearing aids or accessories from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids.

Drafting Note: Current subsection (a) is now proposed § 54.1-1504. Requirements for licensure and exemptions were separated into two sections. Proposed subsection C is a rewording of current § 54-524.112, which is being repealed.

§ 54-524.112. Measuring hearing. This chapter is not intended to prevent any person from

engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided such person or organization employing such person does not sell hearing aids or accessories thereto.

Drafting Note: This section is being repealed and added as subsection C of § 54.1-1501.

~~§ 54.1-1502. § 54-524.113. Board continued ; qualifications and terms of members ; officers .-~~
The Virginia Board of Hearing Aid Dealers and Fitters is hereby continued *The Board for Hearing Aid Specialists* . It shall be composed consist of seven members, as follows: four licensed hearing aid dealers and fitters specialists , one otolaryngologist, and two citizen members ; one . One of whom the citizen members shall be a hearing aid user and the other a person a member of whose family who has a family member who is or has been a hearing aid user. Each hearing aid dealer and fitter specialist and the otolaryngologist shall have at least five years of experience in their respective fields immediately prior to appointment. The term terms of board members shall be four years.

There shall be a chairman and vice-chairman, each of whom shall be elected by the Board from its membership.

Drafting Note: The name of the Board is changed to the Board for Hearing Aid Specialists. It is specified that the prerequisite experience of the hearing aid specialist and otolaryngologist members must be in their respective fields. The provision regarding election of officers is taken from current § 54-524.116.

~~§ 54.1-1503. § 54-524.114. Nominations for Board appointments.- Each~~ *The appointment to the Board of an the otolaryngologist member* may be made from a list of at least three names for each such appointment submitted to the Governor by the Medical Society of Virginia ; and each . *The appointment to the Board of a hearing aid dealer and fitter specialist members* may be made from a list of at least three names for each such appointment vacancy submitted to the Governor by the Virginia Hearing Aid Dealers Association. Such Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor shall may notify such the Society or Association, respectively, of any vacancy other than by expiration, and like nominations may be made ; within the period set by the Governor, for the filling of such the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees submitted by such Society or Association .

Drafting Note: No change in the law.

~~§ 54-524.116. Officers; oaths; members may administer oaths and take testimony .-~~ *The members of the Board shall elect annually from its own members a chairman and a vice-chairman.*

Every person appointed a member of the Board shall , before entering upon the duties of his office, take his oath of office before some officer authorized to administer an oath and file a certificate of the oath with the secretary of the Board. Any member of the Board in the official discharge of his duties may administer oaths and take testimony concerning any matter within the jurisdiction of the Board.

Drafting Note: The provision regarding election of officers was moved to § 54.1-1502. The other provisions of this section are being deleted because § 49-1 requires all state officers to take an oath.

~~§ 54.1-1504. License required.-~~ *No person shall engage in the practice of fitting and dealing in hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and dealing of hearing aids unless he holds a license as provided in this chapter.*

Drafting Note: This section is subsection (a) of current § 54-524.111. A reference to January 1, 1971, as the date when the requirement for licensure commenced is removed.

CHAPTER 16.

LIBRARIANS.

~~§ 54.1-1600. Definitions.-~~ *As used in this chapter, unless the context requires a different meaning:*

"Board" means the Board for Librarians.

"Books and library materials" means books, maps, newspapers, magazines, pamphlets,

manuscripts, documents, public records, microforms, audio or visual material in any format, machine readable data records, materials for the developmentally disabled and handicapped, or other documentary, written, or printed materials, using any technology, which are processed and organized for use by members of the public generally. Except for personnel costs, the term includes supplies and processing fees which are essential to preparing books and other library materials for use by members of the public generally.

“Library” means an educational and cultural institution established to provide books and library materials required to meet the range of informational service needs of respective constituencies.

“Professional librarian” means a person employed to work in a library in a position requiring extensive knowledge of informational resources, library service patterns, historical perspectives, and the ability to coordinate, synthesize and disseminate information through the use of books and library materials on a level equivalent to that required for graduation from a library school accredited by the American Library Association.

“Public library” means a library that receives its primary support from a local public tax base.

Drafting Note: A definitional section was added. All of the definitions are new and were proposed by the Board.

~~§ 54.1-1601. § 54-272. Libraries Certain libraries exempted.—Nothing in this chapter shall apply to the State Law Library or law libraries of counties and cities organized pursuant to Chapter 4 of Title 42.1 (§ 42.1-60 et seq.) , or to public school libraries of public, elementary and high schools .~~

Drafting Note: Law libraries organized pursuant to Chapter 4 of Title 42.1 include regional law libraries as well as the State Law Library and law libraries of counties and cities. This section was revised to exempt all public school libraries, not just those in elementary and high schools.

~~§ 54-261. Board for Certification of Librarians continued.— The State Board for the Certification of Librarians, referred to in this chapter as the Board, is continued.~~

Drafting Note: This section is being repealed because references to the continuation of boards are being deleted.

~~§ 54.1-1602. § 54-262. Members of Board for Librarians; composition ; terms.— The Board for Librarians shall consist of five members : Four as follows: four shall be licensed librarians and the fifth member shall be the State Librarian. Except for the State Librarian all members shall be appointed for five-year terms on a staggered term basis .~~

Drafting Note: The name of the Board was changed to the Board for Librarians. Proposed § 54.1-200 in the Department of Commerce’s general provisions requires that terms of board members be staggered. Therefore it is not necessary to repeat that requirement here.

~~§ 54.1-1603. § 54-264. Appointments from nominees of Virginia Library Association Nominations for Board appointments .— Each appointment on to the Board may be made from a list of at least five names for each vacancy sent submitted to the Governor ; or to the Governor-elect, by the executive committee of the Virginia Library Association. The Governor shall may notify the Association promptly of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees of the Association .~~

Drafting Note: No change in the law.

~~§ 54.1-1604. § 54-268.1. Board to establish standards promulgate regulations for the licensing of librarians .— The Board shall establish standards promulgate regulations for the licensing of librarians for minimum competency in performance certification and licensure of professional library positions librarians . In establishing such standards the Board may require a written examination which measures necessary knowledge, skills and ability or waive such examination where evidence exists that knowledge, skill and ability have been acquired through other means which may include graduation from a graduate school of library science accredited by the American Library Association.~~

Drafting Note: At the request of the Board, the Board was given the duty to promulgate regulations for the certification of librarians, as well as the licensure of librarians. The words “establish standards” were changed to “promulgate regulations.” Language giving the Board the authority to require a written examination was stricken, as the Board already has this authority.

~~§ 54.1-1605. § 54-271.1. Requiring reports.— The Board may require reports from libraries as~~

may be necessary to determine compliance with the provisions of this chapter and the rules and regulations of the Board.

Drafting Note: No change in the law.

~~§ 54.1-1606. § 54-271.~~ License required to hold ~~be employed as a professional library position~~ ~~librarian~~ .— ~~No public library~~ *Public libraries* serving a political subdivision or subdivisions having over 5,000 population and ~~no library libraries~~ operated by the Commonwealth or under its authority, including libraries of institutions of higher learning, shall ~~have in its not employ ; in the position of librarian or in any other a full-time professional library position;~~ a person ~~librarian~~ who does not hold a librarian's license issued by the Board.

A professional library position as used in this section is one that requires a knowledge of books and of library technique equivalent to that required for graduation from any accredited library school.

No public funds shall be paid to any person whose employment does not comply with this chapter section .

Drafting Note: The definition of professional librarian was moved to the definitional section. The word chapter was changed to section in the last sentence.

CHAPTER 17.

OPTICIANS.

~~§ 54.1-1700. § 54-398.2.~~ Definitions.— As used in this chapter , unless the context requires a different meaning :

“Board” means the Board for Opticians.

(a) *“Licensed physician” means any person authorized to treat human ailments, diseases or infirmities by any means or method under the laws of this State licensed by the Board of Medicine to practice medicine and surgery .*

(b) *“Registered optometrist” means any person authorized to practice optometry under the laws of this State.*

(c) *“Virginia State Board of Opticians” or “the Board,” means the Board created by and pursuant to the provisions of this chapter.*

(d) *“Optician” means any person, not exempted by ~~§ 54-398.1~~ § 54.1-1701 , who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances thereto , for the intended wearers or users thereof , on prescriptions from licensed physicians or registered licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances thereto ; or who interprets , in accordance with such prescriptions or such , duplications or reproductions, and, in accordance therewith, measures, adapts, fits, and adjusts such eyeglasses, spectacles, lenses, or appurtenances, to the human face.*

“ Licensed optician” means any person who is the holder of a certificate of registration license issued by the Virginia State Board of for Opticians.

“Licensed optometrist” means any person authorized by Virginia law to practice optometry.

Drafting Note: The definitions were arranged in alphabetical order. The name of the Board was standardized by dropping “Virginia” and “State” and changing “of” to “for.” The definition of “licensed physician” was revised to make it more specific. The terms “registered optician” and “registered optometrist” were changed to “licensed optician” and “licensed optometrist.”

~~§ 54.1-1701. § 54-398.1.~~ Exemptions.— Nothing in The provisions of this chapter shall not apply to:

(1) 1. Any licensed physician or registered licensed optometrist; or

(2) 2. Any individual, partnership or corporation engaged in supplying ophthalmic prescriptions and supplies exclusively to licensed physicians, to registered licensed optometrists, to registered licensed opticians, or to optical scientists; or

(3) 3. Any person who does not hold himself out to the public as an “optician,” and who works exclusively under the direct supervision and control of a licensed physician or registered

licensed optometrist or ~~registered licensed~~ optician, and in the same location; or

(4) 4. The sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, or binoculars ; ~~or any of such articles~~, which are completely preassembled and are sold only as merchandise at ~~permanently located or established places of business~~ .

Drafting Note: The requirement that preassembled merchandise be sold only at a permanently located or established place of business was dropped.

§ 54.1-1702. ~~§ 54-398.4.1. Board for Opticians continued ; members; terms.— A. The Virginia State Board of for Opticians is hereby continued. The Board shall be composed consist of five members ; as follows: three licensed opticians of at least five years' experience prior to appointment, one ophthalmologist who has practiced ophthalmology for at least five years prior to appointment, and one citizen member. As the terms of members serving on January 1, 1981, expire, their successors shall be appointed to serve five-year terms Terms shall be for five years~~

B. ~~[Repealed.]~~

There shall be a chairman and a vice-chairman, each of whom shall be elected annually by the Board from its membership.

Drafting Note: A reference to the terms of members serving on January 1, 1981, was removed. The second paragraph is current § 54-398.10, which is being repealed.

§ 54.1-1703. ~~§ 54-398.5. Nominations submitted to Governor for Board appointments — Each appointment on Appointments to the Board may be made from a list of at least three names for each appointment vacancy submitted to the Governor by the “ Virginia Society of Prescription Opticians “ for each appointee who is an optician, and by the “ Medical Society of Virginia “ for each appointee who is a physician and by the “Virginia Optometric Association, Inc.” for the appointee who is an optometrist . Nominations are to for appointments to regular terms shall be submitted to the Governor on or before June first 1 of each year . The Governor shall may notify the said above societies of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees submitted by said societies or either of them .~~

Drafting Note: The provision allowing the Virginia Optometric Association to submit nominations for the optometrist appointee is removed since there is no optometrist Board member.

§ 54.1-1704. ~~§ 54-398.3. Practice of opticians restricted. — On or after January 1, 1955, no No person shall practice or offer to practice as an optician in this State Commonwealth unless he is the holder of holds a license issued as hereinafter provided under this chapter . However, no registered optometrist shall be required to obtain any license from the Board in order to practice or offer to practice as an optician.~~

Drafting Note: A reference to January 1, 1955, as the date licensing requirements commenced is dropped. The second sentence of this section is stricken because it is not necessary since licensed optometrists are exempt from this chapter under proposed § 54.1-1701.

§ 54.1-1705. ~~§ 54-398.27. Optical prescriptions, ocular refraction, etc.—Nothing in this chapter shall be construed in any way to authorize an optician, or anyone else not otherwise authorized by law, to make, issue, or alter optical prescriptions, or to practice ocular refraction, orthoptics, or visual training, or to fit contact lenses except on the prescription of an ophthalmologist or optometrist and under his direction, or to advertise or offer to do so in any manner .~~

Drafting Note: No change in the law.

§ 54-398.9. Oath of office — Every person appointed a member of the Board shall ; before entering upon the duties of his office, take the oath of office before some officer authorized to administer an oath ; and file a certificate of the oath with the secretary of the Board. Any member of the Board in the official discharge of his duties may administer oaths and take testimony concerning any matter within the jurisdiction of the Board.

Drafting Note: This section is being repealed because § 49-1 requires all state officers to take an oath.

§ 54-398.10. Officers of the Board. There shall be a chairman and a vice-chairman, each of whom shall be elected annually by the Board from its own members.

Drafting Note: This section is being included as the second paragraph of proposed § 54.1-1702.

CHAPTER 18.

POLYGRAPH EXAMINERS.

§ 54.1-1800. ~~§ 54-916.~~ Definitions.— As used in this chapter , unless the context requires a different meaning:

“Course of instruction” means a formal course of instruction in the detection of deception in an institution approved by the Director.

A. ~~“Polygraph examiner,” hereinafter referred to as “examiner,” means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.~~

B. ~~“Person” means any natural person, partnership, association, corporation, or trust.~~

C. ~~“Department” means the Department of Professional and Occupational Regulation Commerce .~~

D. ~~“Director” means the Director of the Department of Professional and Occupational Regulation Commerce .~~

“Person” means any natural person, partnership, association, corporation or trust.

E. ~~“Polygraph” means any mechanical or electronic instrument or device of any type used or allegedly used to test or question individuals for the purpose of determining truthfulness ; regardless of the name or design of the device or instrument used .~~

“Polygraph examiner” or “examiner” means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.

F. ~~“Polygraph examiner intern” means and includes any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.~~

G. ~~“Course of instruction” means a formal course of instruction in the detection of deception in an institution approved by the Director.~~

Drafting Note: The definitions were arranged in alphabetical order and references to the Department of Professional and Occupational Regulation were changed to the Department of Commerce.

§ 54.1-1801. ~~§ 54-918.~~ Licenses.— ~~On and after January 1, 1976, all~~ All polygraph examiners shall be licensed pursuant to this chapter.

Drafting Note: The reference to January 1, 1976, as the date licensure requirements commenced was removed.

~~§ 54-919. Automatic qualification for certain examiners. Any person working as a polygraph examiner in this State prior to the effective date of this chapter shall automatically qualify for a license under this chapter; provided that such person has successfully completed a minimum of one hundred eighty hours of formal training in the detection of deception at an institution approved by the Director.~~

Drafting Note: This section is being repealed because all persons working as polygraph examiners before the effective date of this chapter (July 1975) should have already obtained a license.

§ 54.1-1802. ~~§ 54-917 .~~ Rules and regulations *Regulations* .— The Director shall make and publish rules and promulgate regulations not inconsistent with the laws of Virginia which are necessary to carry out the provisions of this chapter and of Chapter 1-1 (~~§ 54-1.3 et seq.~~) of Title 54 of the Code of Virginia Chapter 1 (*§ 54.1-100 et seq.*) of Title 54.1 .

Drafting Note: No change in the law.

54.1-1803. ~~§ 54-920 .~~ Approval of schools to teach ~~course of instructions~~ *courses of instruction* .— The Director shall establish rules and promulgate regulations for the approval of schools to teach the required course in which ~~courses of instruction in the detection of deception are~~ taught .

Drafting Note: No change in the law.

§ 54.1-1804. ~~§ 54-921~~. Submission of fingerprints.— Each applicant for licensure as a polygraph examiner ~~or and each~~ polygraph examiner intern shall submit his fingerprints to the Department on a form provided by the Department.

Drafting Note: No change in the law.

§ 54.1-1805. ~~§ 54-922~~. Instrument to be used.— ~~Every~~ Each examiner shall use an instrument which records permanently and simultaneously the subject's cardiovascular and respiratory patterns as minimum standards, but such an instrument may record additional physiological changes pertinent to the determination of truthfulness.

Drafting Note: No change in the law.

CHAPTER 19.

PRIVATE SECURITY SERVICES BUSINESSES.

§ 54.1-1900. ~~§ 54-729.27~~. Definitions.— For the purposes of this chapter and subsection A of § 9-182 of the Code of Virginia, the following definitions shall apply, unless the context requires a different meaning:

“Armed guard” means a guard, as defined below, who carries or has immediate access to a firearm or other deadly weapon in the performance of his duties.

“Armored car personnel” means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments ; ~~jewelry, art objects,~~ or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

“Board” means the Criminal Justice Services Board or any successor ; board or agency ~~designated by law to replace the Board~~ .

“Compliance agent” means a natural person who ~~is an owner of~~ owns or is employed by a licensed private security services business ; ~~The compliance agent shall~~ to assure the compliance of the private security services business with this title.

“Courier” means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

“Department” means the Department of Commerce or ~~the~~ any successor agency ~~designated by law to replace the Department~~ .

“Guard” means any person ~~who~~ is employed by a private security services business ~~who undertakes~~ to safeguard and protect persons and property or ~~undertakes~~ to prevent theft, loss, or concealment of any tangible or intangible personal property.

“Guard dog handler” means any person ~~who~~ is employed by a private security services business ~~and handles to handle~~ dogs in the performance of duty in protection of property or persons.

“License” or “licensing” means a method of regulation whereby ~~engaging in a private security services business is unlawful without the issuance of a license by the Department of Commerce pursuant to this title.~~

“Natural person” means an individual, ~~not a corporation.~~

“Person” means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

“Private investigator” or “private detective” means any person who engages in the business of, or accepts employment to make, investigations ~~for the purpose of obtaining to obtain~~ information ~~with reference to~~ on (i) crimes or civil wrongs; ~~(ii) [Repealed.] (iii)~~ (ii) the location, disposition, or recovery of stolen property; ~~(iv)~~ (iii) the cause of responsibility for accidents, fires, damages, or injuries to persons or to property; or ~~(v)~~ (iv) securing evidence to be used before any court, board, officer, or investigative committee.

“Private security services business” means any person ~~engaging~~ engaged in the business of

providing, or who undertakes to provide, armored car personnel, guards, private investigators, private detectives, couriers, or guard dog handlers, to another person under contract, express or implied.

“Registration” means a method of regulation whereby certain personnel employed by a private security services business are required to obtain a registration from the Department pursuant to this ~~title~~ *chapter* .

“Unarmed guard” means a guard who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties.

Drafting Note: the definition of “license” was removed because it is defined in the general provisions section. The definition of “natural person” was removed because its meaning is obvious.

~~§ 54.1-1901. § 54-720.28.~~ Persons exempt from application of chapter.—The provisions of this chapter shall not apply to the following:

~~A. 1.~~ 1. An officer or employee of the United States of America, or of this Commonwealth or a political subdivision of either, while the employee or officer is engaged in the performance of performing his official duties.

~~B. 2.~~ 2. A person engaged exclusively in the business of obtaining and furnishing information ~~as to the~~ regarding an individual's financial rating of persons or a person engaged in the business of a consumer reporting agency as defined by the Federal Fair Credit Reporting Act.

~~C. 3.~~ 3. An attorney ~~at-law~~ licensed to practice in Virginia or his employees.

~~D. 4.~~ 4. The legal owner of personal property which has been sold under any security agreement while performing acts relating to the repossession of such property.

~~E. 5.~~ 5. A person receiving compensation for private employment as a guard who also has full-time employment as a law-enforcement officer employed by the Commonwealth or any political subdivision thereof.

~~F. 6.~~ 6. Any person appointed under § 56-277.1 or § 56-353 while engaged in the employment contemplated thereunder.

~~G. Regular employees of any person~~ 7. Persons who are regularly employed to investigate accidents or to adjust claims and who do not carry weapons in the performance of their duties.

~~H. 8.~~ 8. Regular employees of persons engaged in other than the private security services business, where the regular duties of such employees primarily consist of protecting the property of their employers. Any such employee who carries a firearm and is in direct contact with the general public in the performance of his duties shall possess a valid registration with the Department as provided in ~~§ 54-720.29~~ ~~B subsection B of § 54.1-1902~~ . “General public” ~~shall mean~~ means individuals who have access to areas open to all and not restricted to any particular class of the community.

~~I. 9.~~ 9. Persons, sometimes known as “shoppers,” employed to purchase goods or services solely for the purpose of determining or assessing the efficiency, loyalty, courtesy, or honesty of the employees of a business establishment.

~~J. 10.~~ 10. Licensed or registered private investigators from other states entering Virginia during the course of an investigation originating in their state of licensure or registration when the other state offers similar reciprocity to private investigators licensed and registered by the Commonwealth of Virginia.

~~K. 11.~~ 11. Unarmed regular employees of telephone public service companies where the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers' affiliates, and other communications common carriers.

Drafting Note: No change in the law.

~~§ 54.1-1902. § 54-720.29.~~ Licensing and registration.—A. No person shall engage in the private security services business in this Commonwealth without having first complied with the qualifications for licensure established by the Department and obtained a license therefor from the Department. No person shall be issued a private security services business license until a compliance agent is designated in writing on forms provided by the Department. The compliance

agent shall meet the qualifications and perform the duties required by the ~~rules and~~ regulations promulgated by the Department.

B. No person shall be employed by a licensed private security services business in this Commonwealth as armored car personnel, ~~or~~ as a courier, guard, guard dog handler, private investigator or private detective without possessing a valid registration issued by the Department or having ~~made application applied~~ for registration with the Department. No person shall be issued a registration until ~~such person~~ *he* has complied with, or been exempted from, the compulsory minimum training standards established by the Board, pursuant to subsection A of § 9-182, for armored car personnel, couriers, guards, guard dog handlers, private investigators or private detectives. An applicant for registration with the Department may be authorized by the Department, on the basis of his application, to be employed by a private security services business as armored car personnel, courier, guard, guard dog handler, private investigator, or private detective for 120 days from the date of application for registration.

C. The Department shall, in its discretion, be authorized to ~~may~~ grant a temporary exemption from the requirement of a license or application for a registration for a period of not more than thirty days in a situation deemed an emergency by the Department.

~~D. [Repealed.]~~

Drafting Note: No change in the law.

~~§ 54.1-1903. § 54-720.30. Powers of Department ; Private Security Services Advisory Committee continued as Private Security Services Advisory Board .~~—In addition to the powers otherwise conferred upon it by law, the Department shall have the power to:

~~A. 1. Charge each applicant for licensure or registration a nonrefundable fee ; which shall be nonrefundable, in an amount determined by the Department to be reasonable to cover the costs of the Department in processing such an application for a registration or license and the costs of the Department of Criminal Justice Services in promulgating regulations establishing compulsory minimum training standards and inspecting and evaluating facilities and programs of persons conducting training pursuant to § 9-182.~~

~~B. The Department shall promulgate rules and 2. Promulgate regulations, pursuant to Chapter 1.1:1 the Administrative Process Act (§ 9-6.14:1 et seq.), of Title 9, of the Code of Virginia, so as to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities regulated by this chapter and shall exercise all other powers and duties of and with respect to regulatory boards as provided for in §§ 54-1.28 and 54-1.33 of the Code of Virginia .~~

~~C. The Department shall conduct an investigation 3. Conduct investigations to determine the suitability of each applicant applicants for registration or licensure. For purposes of this investigation, the Department shall have access to criminal history record information maintained by the Central Criminal Records Exchange of the Department of State Police.~~

~~D. The Private Security Services Advisory Committee is continued and shall hereafter be known as the Private Security Services Advisory Board. The Private Security Services Advisory Board shall be composed of six members of whom two shall be private investigators and four shall be persons engaged in the private security services business. The Director of the Department shall appoint one private investigator and two persons engaged in the private security services business who shall serve at the pleasure of the Director. The Criminal Justice Services Board shall appoint one private investigator and two persons engaged in the private security services business who shall serve at the pleasure of the Criminal Justice Services Board. The Private Security Services Advisory Board shall advise the Director and the Criminal Justice Services Board on any and all problems relating to regulation of private security services businesses.~~

Drafting Note: Powers of the Department and the Private Security Services Advisory Board were separated into two sections. Proposed § 54.1-1904 pertains to the Board.

§ 54.1-1904. Private Security Services Advisory Board.— There shall be a Private Security Services Advisory Board which shall be composed of six members. Two of the members shall be private investigators and four members shall be persons engaged in the private security services business. The Director of the Department shall appoint one private investigator and two persons engaged in the private security services business who shall serve at the pleasure of the Director. The Criminal Justice Services Board shall appoint one private investigator and two persons engaged in the private security services business who shall serve at the pleasure of the Criminal Justice Services Board. The Private Security Services Advisory Board shall advise the Director

and the Criminal Justice Services Board on all problems relating to regulation of private security services businesses.

Drafting Note: This is a new section which is taken from current § 54-729.30, which deals with both the powers of the department and the Private Security Services Advisory Board.

§ 54.1-1905. ~~§ 54-729.31.~~ Bond or insurance required.—A. Every person licensed under § ~~54-729.29~~ ~~A subsection A of § 54.1-1902~~ shall, at the time of receiving ~~such~~ the license and before the ~~same~~ license shall be operative, file with the Department (i) a cash bond or evidence that ~~such person~~ the licensee is covered by a surety bond, executed by a surety company authorized to do business in this *State Commonwealth*, in a reasonable amount to be fixed by the Department, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance in an amount and with coverage as fixed by the Department.

B. If any person ~~shall be~~ aggrieved by the misconduct of any ~~such~~ person licensed under this article and ~~shall recover subsection A of § 54.1-1902~~ recovers judgment against ~~him~~ the licensee, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain an action in his own name upon the bond of the ~~person licensed under this article~~ [chapter] licensee.

Drafting Note: The words “subsection A of 54.1-1902” were added to subsection B of proposed § 54.1-1905 to make it clear that subsection B applies only to persons licensed to engage in the private security services business.

§ 54.1-1906. ~~§ 54-729.32.~~ Applicants to submit fingerprints.—Each applicant for registration under the provisions of this chapter shall submit his fingerprints to the Department ~~in~~ on a form provided by the Department.

Drafting Note: No change in the law.

§ 54.1-1907. ~~§ 54-729.33.~~ Power of guard to effect arrest.— ~~The compliance~~ Compliance with the provisions of this chapter shall not of itself authorize any person to carry a concealed weapon or exercise any powers of a conservator of the peace. A registered guard of a private security services business while ~~on~~ at a location which ~~such~~ the business is contracted to protect shall have the power to effect an arrest for an offense occurring (i) in his presence on such premises or (ii) in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if ~~such~~ the merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods as contemplated by § 18.2-105. For the purposes of § 19.2-74, a registered guard of a private security services business shall be considered an arresting officer.

Drafting Note: No change in the law.

§ 54.1-1908. ~~§ 54-729.34.~~ Unlawful acts.— A. It shall be a Class 1 misdemeanor for any person required by § ~~54-729.29~~ A to be licensed to engage in the private security services business in this State without having first obtained a license.

B. It shall be a Class 1 misdemeanor for any person required to possess a registration or to have ~~made application~~ applied for registration under § ~~54-729.29~~ B subsection B of § 54.1-1902 to be employed by a private security services business as armored car personnel, ~~or~~ as courier, guard, guard dog handler, private investigator, or private detective without possessing a valid registration or having a valid application for registration pending with the Department.

C. B. It shall be a Class 1 misdemeanor for any person licensed or required to be licensed under § ~~54-729.29~~ A subsection A of § 54.1-1902, to employ or otherwise utilize as armored car personnel, ~~or~~ as courier, guard, guard dog handler, private investigator, or private detective any person not possessing a valid registration or not having a valid application for registration pending with the Department.

Drafting Note: Proposed § 54.1-111 in General Provisions Relating to Regulatory Boards also lists unlawful acts and penalties. Current subsection A is duplicative with § 54.1-111.

CHAPTER 20.

PUBLIC ACCOUNTANCY.

§ 54.1-2000 § 54-102.25 . Definitions.—As used in this chapter ; the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Assurance” means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

“Board” means the State Board of for Accountancy continued by the provisions of this chapter and established by its predecessor under prior law.

“Certificate” means a certificate as a certified public accountant issued by the Board pursuant to this chapter or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state.

“Financial statement” means writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

“License” means a license to practice public accounting issued under the provisions of this chapter or corresponding provisions of prior law .

“Practice of public accountancy” or “public accounting” means the giving of an assurance, in a report or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his employer.

“Registration certificate” means a certificate issued to a professional corporation that has met all of the requirements for registration under this chapter.

“Report” or “reports” when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance.

“State” means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

Drafting Note: This chapter was enacted during the 1987 General Assembly Session and revises the former chapter regulating this profession. The name of the Board was changed at the direction of the Virginia Code Commission. There was no change in the law.

§ 54.1-2001 § 54-102.33 . Inapplicability of chapter.—A. ~~Nothing contained in this~~ This chapter shall *not* be construed to prevent any person from :

1. ~~describing~~ Describing himself as an “accountant” or a “bookkeeper” ~~or from stating~~ ,
2. *Stating* that he practices accountancy or bookkeeping ; ~~nor shall this chapter be construed to prevent any person from performing~~ ,
3. *Performing* services involving the use of accounting skills, ~~from rendering~~
4. *Rendering* tax services, management advisory or consulting services, ~~or from the keeping of~~
5. *Keeping the* books of account and related accounting records, ~~or from preparing~~
6. *Preparing* financial statements without the expression of an opinion or an assurance.

B. ~~Nothing contained in this~~ This chapter shall *not* be construed to prevent any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language which comprises an assurance.

C. The prohibitions of § 54-102.31 54.1-2007 and the other provisions of this chapter shall not be construed to preclude the use of the following language: “I (We) have compiled the accompanying (financial statements) of (Name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements

information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position). If omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operations, and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about these matters."

Drafting Note: No change in the law.

~~§ 54.1-2002 §54-102.26~~ . State Board of for Accountancy; membership; qualifications; powers and duties of Board.—A. The State Board of for Accountancy is continued and shall have the responsibility for the enforcement of the provisions of this chapter subject to the powers and duties of the Director as set forth in § 54-1.33. The Board shall consist of seven members who shall be residents of Virginia and who shall be appointed by the Governor and serve at his pleasure. Appointment of members of the Board shall be serve for terms of five years. Members of the State Board of for Accountancy as it exists existed prior to July 1, 1987, may continue as Board members until their individual terms expire.

As the terms of the members of the Board expire, they shall be replaced by members with the following qualifications: one public member who may be an unlicensed accountant who otherwise meets the requirements of § 54-1.18:1 54.1-107 (i) and (ii); one educator in the field of accounting; and five practicing certified public accountants, duly certified and licensed, who have been actively engaged in the practice of public accounting for at least three years prior to appointment to the Board. Any certified public accountant member of the Board whose license is revoked or suspended shall automatically cease to be a member of the Board.

Vacancies occurring during a term shall be filled by appointment by the Governor for the unexpired term. Upon the expiration of his term of office, a member shall continue to serve until his successor takes office. No person shall be eligible to serve on the Board for more than two successive full terms. Appointment to fill an unexpired term shall not be considered a full term for this purpose.

B. The Board shall have the responsibility for the enforcement of the provisions of this chapter subject to the powers and duties of the Director.

~~§ 54-102.24~~. Practice of public accounting; certified public accounting; certified public accountants.—It is the intent of the General Assembly that the State The Board of for Accountancy shall certify and license persons to practice public accountancy and restrict the practice of public accountancy to those persons who are so certified and licensed ; and that it . The Board shall also take such actions as may be authorized by this title to aid the public in determining the qualifications of persons who give assurances on financial statements.

C. B. The Board may establish continuing education requirements for the issuance of a license or to assure continued competency of licensees.

Drafting Note: The stricken language in subsection A duplicates provisions in proposed § 54.1-107. The provisions in current § 54-102.24 were included in subsection B along with the first sentence of subsection A of current § 54-102.26. Subsection B of § 54-102.26 was changed to subsection C. There was no change in the law.

~~§ 54.1-2003. § 54-102.27~~. Grant of certificate; restrictions on practice; educational requirements.—A. The Board shall issue a certificate only to a person who meets the character, education, and examination requirements established by regulations of the Board. A person who holds a valid certificate granted to him by the Board may refer to himself as a Certified Public Accountant or CPA but is not empowered to practice public accountancy until he obtains a valid license to do so.

B. For the purpose of meeting the examination requirements referred to in subsection A of this section, the Board may admit for examination graduates of (i) Bristol College, Bristol, Tennessee, using the same criteria for admission as required by the Tennessee State Board of Accountancy and (ii) Benjamin Franklin School of Accountancy and Financial Administration, Washington, D.C., using the same criteria for admission as required by the District of Columbia Board of Accountancy.

Drafting Note: No change in the law.

~~§ 54.1-2004. § 54-102.28~~. Grant and renewal of license; rights of licensee.—The Board shall issue a license only to a person who holds a valid certificate and who has met work experience requirements established by Board regulation.

The Board shall grant or renew a license only if the license holder meets requirements established by the Board. A person who holds a valid license granted to him by the Board may practice public accounting.

Drafting Note: No change in the law.

§ 54.1-2005. § 54-102.20. Professional corporations.—A. No professional corporation organized under the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 shall practice, directly or indirectly, public accounting in this Commonwealth unless registered under this chapter.

B. A professional corporation organized under the provisions of Chapter 7 of Title 13.1 shall be issued a registration certificate by the Board upon its application and payment of the required registration fee provided that:

1. Each shareholder of the professional corporation who will practice public accountancy in Virginia holds a license issued by the Board.

2. The name of the professional corporation and the conduct of its practice conform with the ethical standards which its shareholders are required to observe in the practice of public accountancy and the name includes such designation of the corporate form as is authorized by Chapter 7 of Title 13.1 and is followed by the description a "Professional Corporation" or "PC."

C. Professional corporation registration certificates shall be renewed biennially on the anniversary date if such corporation meets the requirements for registration and has paid the registration fee. The Board shall establish a renewal fee.

Drafting Note: No change in the law.

§ 54.1-2006. § 54-102.30. Unprofessional conduct.—The Board may revoke or suspend a license or certificate or ~~imposed~~ impose lesser sanctions for any of the following causes:

1. The use of fraud, deceit, or misrepresentation about credentials or qualifications for licensure or certification.

2. The conviction of a ~~felony or of a misdemeanor~~ any crime involving moral turpitude.

3. Unprofessional conduct in violation of the Standards of Practice ~~enacted~~ adopted by the Board.

4. Professional discipline imposed by another state in the practice of public accountancy.

5. Dishonesty, fraud, or negligence in the practice of public accountancy.

6. Suspension or revocation of the right to practice before any state or federal agency.

7. Violation of any of the provisions of this chapter or any regulation promulgated by the Board.

Drafting Note: No change in the law.

§ 54.1-2007. § 54-102.31. Prohibited acts.—A. A person who does not hold a valid license issued by the Board shall not : ~~claim~~

1. ~~Claim to hold one a valid license ; nor shall he practice~~

2. ~~Practice or offer to practice public accountancy or public accounting; nor shall he make or~~

3. ~~Make any other claim of licensure, registration, or approval related to the preparation of financial statements which is false or misleading.~~

B. A person who does not hold a valid certificate issued by the Board shall not claim to hold one or describe himself as or assume any of the following titles or designations: certified public accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant, licensed accountant, LA, registered accountant, RA, independent auditor or auditor.

C. A person who does not hold a valid licensed issued by the Board shall not claim to have used "generally accepted accounting principles," "generally accepted accounting standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing principles," or "generally accepted auditing standards," in connection with his preparation of any financial statement; nor shall he use any of these terms in describing any complete or partial

variation from such standards or principles or to imply complete or partial conformity with such standards or principles.

D. A person who does not hold a valid license issued by the Board shall not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review" in a report as that term is defined in this chapter, and which expresses assurance on a financial statement.

E. A person who does not hold a valid license issued by the Board shall neither state nor imply that he is tested, competent, qualified, or proficient in financial standards established by (i) the American Institute of Certified Public Accountants or any agency thereof, (ii) the Governmental Accounting Standards Board or any agency thereof, (iii) the Securities and Exchange Commission or any agency thereof, (iv) the Financial Accounting Standards Board, or (v) any successor entity to an entity named in this subsection.

F. ~~No~~ A person who holds a valid license issued by the Board shall *not* engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers, or shareholders of the firm or of a predecessor firm; nor shall any such person engage in the practice of public accounting under a professional or firm name which is deceptive or misleading.

Drafting Note: No change in the law.

~~§ 54.1-2008. § 54-102.32.~~ Exemptions from unlawful acts.— A. The unlawful acts set forth in § ~~54-102.31~~ 54.1-2007 shall not apply to or prohibit a person or firm holding a certification, designation, degree or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, provided that:

1. The practice of this person or firm in the Commonwealth of Virginia is limited to providing professional services to persons or firms who are residents of, governments of, or business entities of the country in which such entitlement is held;

2. Such person or firm does not engage in the practice of public accountancy in the preparation of financial statements about any other person, firm, or governmental unit in the Commonwealth of Virginia; and

3. The person or firm designates the country of origin and does not use any title or designating other than the one under which he or it may lawfully practice in the country of origin, which may be followed by a translation of such title or designation into English.

B. ~~No section~~ *The provisions* of this chapter shall *not* be construed, interpreted, or applied in such a way as to prohibit any public employee from performing his duly authorized or mandated duties.

Drafting Note: No change in the law.

~~§ 54-102.34. Criminal penalty.—Any person or firm who commits an act prohibited by § 54-102.31 shall be guilty of a Class 3 misdemeanor.~~

Drafting Note: This section is being repealed because it duplicates the provisions of proposed § 54.1-111 applying to all regulatory boards. The penalty will be raised from a Class 3 to a Class 1 misdemeanor.

~~§ 54-102.35. Injunctive relief.— If any person or firm commits an act prohibited by this chapter, the Board shall be empowered to seek and to obtain injunctive relief from a court of competent jurisdiction to prevent a continuing or future violation.~~

Drafting Note: This section is being repealed because it duplicates the provisions of subsection B of proposed § 54.1-111 which allows the Department of Commerce to obtain injunctive relief.

CHAPTER 21.

REAL ESTATE BROKERS, SALES PERSONS AND RENTAL LOCATION AGENTS.

Article 1.

Regulation of Real Estate Brokers, Salespersons and Rental Location Agents.

~~§ 54.1-2100. § 54-730.~~ Real estate broker defined.— ~~A~~ For the purposes of this chapter, a real estate broker ~~within the meaning of this chapter~~ is any person, partnership, association or corporation who, for a compensation or a valuable consideration ; (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426 of the Code, or time-shares in a time-share program even though they may be deemed to be securities , or ~~who~~ (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others ; as a whole or partial vocation .

Drafting Note: No change in the law.

~~§ 54.1-2101. § 54-731.~~ Real estate salesperson defined.— ~~A~~ For the purposes of this chapter, a real estate salesperson ~~within the meaning of this chapter~~ is any person who for a compensation or valuable consideration (i) is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase or , sale or exchange of real estate, or to lease, to rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon, or (ii) acts as a rental location agent as defined in ~~§ 54-731.1~~ § 54.1-2102 of this article, as a whole or partial vocation chapter .

Drafting Note: No change in the law.

~~§ 54.1-2102. § 54-731.1.~~ Rental location agent defined.— ~~A~~ For the purposes of this chapter, a rental location agent ~~within the meaning of this chapter~~ is any individual who (i) furnishes or offers to furnish rental information to prospective tenants, assists or attempts to assist or offers to assist any person or persons to rent or lease or attempt to rent or lease real property owned by another whereby the prospective tenant is obligated to pay a fee whether or not a rental is obtained through such services ; , or ~~who~~ (ii) solicits or obtains rental listings from landlords or managers in expectation of compensation by including them in information offered prospective tenants. A rental location agent ~~must~~ shall register with the Virginia Real Estate Board : A rental location agent and may not negotiate leases or offer to sell or offer information on property for sale or options on such property.

Drafting Note: No change in the law.

~~§ 54.1-2103. § 54-734.~~ Exemptions from chapter ; advertising by auctioneers and eriers .— A. The provisions of this chapter shall not apply to:

1. Any person, partnership, association or corporation, or their regular employees, who as owner or lessor shall perform any of the acts ~~aforesaid enumerated in §§ 54.1-2100 through 54.1-2102~~ with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased, where such the acts are performed in the regular course of ; or as and incident to ; the management of such the property and the investment therein;

2. Persons acting as attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing, or exchange of real estate;

3. Service rendered by an attorney-at-law in the performance of his duties as such attorney-at-law ;

4. A person acting as a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court;

5. A trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof;

6. Any corporation managing rental housing when the officers, directors, and members in the ownership corporation and the management corporation are the same and the management corporation manages no other property for other persons, partnerships, associations, or corporations.

B. ~~Nor shall the provisions of this~~ The provisions of this chapter ; or any other provisions of law, shall not be construed to prohibit an auctioneer to sell the selling of real estate (i) at public auction by an auctioneer real estate when employed for such purpose by the owner or owners of such real estate, (ii) by an attorney-at-law in the performance of his duties as such attorney-at-law , (iii) by a receiver, trustee in bankruptcy, administrator or executor, a special commissioner or any other person selling real estate under order of court, or (iv) by a trustee acting under the trust agreement, deed of trust or will, or the regular salaried employees thereof as provided in this section . However, an auctioneer shall not advertise that he is authorized to

sell real estate. An auctioneer may advertise for sale at public auction any real estate when ~~duy~~ employed to do so as herein provided, and may advertise that he is authorized to auction real estate at public auction.

C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate or the improvements thereon which the licensed broker has contracted to manage for the owner if such salaried employee is employed on the premises of such real estate and limited in his or her employment to exhibiting residential units on such real estate to prospective tenants, to providing such prospective tenants with information about the lease of such residential units, to accepting applications for lease of such units, and to accepting security deposits and rentals for such units. Such deposits and rentals shall be made payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such owner or broker.

Drafting Note: No change in the law.

~~§ 54.1-2104. § 54-737. Commission continued as Real Estate Board; membership; chairman; seal.~~ -The Virginia Real Estate Commission is continued and shall hereafter be known as the Virginia Real Estate Board :

~~§ 54-738. Qualifications and terms of members.~~ The Board shall consist ~~be composed~~ of five members whose vocation for a period of at least five years prior to the date of their appointment shall ~~who~~ have been that of a licensed real estate broker ~~brokers~~ or a licensed real estate salesperson ~~salespersons~~ for at least five consecutive years before their appointment . The terms of Board members shall be five years.

~~§ 54-739. Organization and chairman.~~ The Commission immediately upon the qualification of the member appointed in each year shall organize by selecting from its members ~~The Board shall elect~~ a chairman from its membership .

~~§ 54-744. Seal.~~ The Commission Board shall adopt a seal with such design as it may prescribe engraved thereon, by which it shall authenticate its proceedings.

Drafting Note: Current §§ 54-737, 54-738, 54-739 and 54-744 were merged into one section.

~~§ 54.1-2105. § 54-740. General powers of Real Estate Board ; rules and regulations; educational requirements for licensure.~~-The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may ~~from time to time~~ promulgate necessary rules and regulations.

The Real Estate Board shall include in its rules and regulations educational requirements ~~beyond those now specified by law~~ as conditions for licensure ~~to ensure the protection of the public interest~~ . The Board shall have the discretion to waive any requirement under such rules and the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. Such requirements shall ensure the better knowledge of real estate salespersons and brokers in order that the public interest may better be protected. No such rule or regulation shall apply to any person ~~who was licensed prior to July 1, 1975, and who has been continuously licensed since that time~~, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers. Regulations promulgated by the Board shall include the following requirements:

(a) ~~As of July 1, 1975, every 1.~~ Every applicant to the Virginia Real Estate Board for an initial license as a real estate salesperson shall have completed a course in the principles of real estate ; ~~such course to carry which carried an~~ academic credit of at least ~~three~~ four semester hours or six quarter hours (but not less than ~~forty-five~~ sixty classroom hours in either case). The course shall be one offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school offering an equivalent course, the content and instruction of which are approved by the Board.

(b) ~~As of July 1, 1975, every 2.~~ Every applicant to the Virginia Real Estate Board for an initial license as a real estate broker shall have completed ~~courses in~~ twelve semester hours in real estate courses offered by an accredited university, college, community college, or other school offering equivalent courses, the content and instruction of which are approved by the Board. Required credits shall be increased for applicants as follows:

Date	Semester Hours in Real Estate Courses
July 1, 1975	3
July 1, 1977	6
July 1, 1979	9

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

The Board shall also include in its rules and regulations educational requirements for any salesperson or broker who at any time after July 1, 1975, has been inactive for more than three years. These rules and The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.

When the license has been inactive for more than three years the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained; or (ii) the holder of such license is a member of or the spouse of a member of the armed forces of the United States who has been permanently assigned outside Virginia for a portion of such the time the license has been inactive and the holder of the inactive license *remained current in the field of real estate and demonstrates this fact* to the satisfaction of the Board ~~that he or she has kept current in the field of real estate~~.

Drafting Note: Semester hours and classroom hours in current subsection (a) were changed at the request of the Director of the Department of Commerce. The Director also requested the provision relating to the applicability of regulations to certain licensees be amended as provided above. The dates and semester hours in real estate courses listed in (b) were stricken since only the July 1, 1981, requirement of 12 semester hours is current. The current requirement was placed in the first sentence of (b), now paragraph 2. References to "Virginia" in the name of Real Estate Board were stricken to conform with changes the Code Commission made regarding deletion of reference to "Virginia" and "State". Other stricken language was determined to be obsolete.

~~§ 54.1-2106. § 54-740. Necessity for license License required .-~~ ~~It shall be unlawful for any~~ No person, partnership, association or corporation, ~~to shall~~ act as a real estate broker, real estate salesperson, or rental location agent or ~~to~~ advertise or assume to act as ~~such~~ a real estate broker, real estate salesperson, or rental location agent without a license issued by the Virginia Real Estate Board. No partnership, association or corporation shall be granted a license, unless every member or officer of ~~such~~ the partnership, association or corporation, who actively participates in its brokerage business, ~~shall hold~~ holds a license as a real estate broker, and unless every employee and every independent contractor who acts as a salesperson for such partnership, association or corporation ~~shall hold~~ holds a license as a real estate salesperson. A person who holds a license as a real estate broker may act as a salesperson for another real estate broker.

Drafting Note: No change in the law.

~~§ 54.1-2107. § 54-732. Doing of one of enumerated acts Certain action~~ to constitute real estate broker or salesperson.— One act for a compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or leasing, or renting, or offering to rent real estate, except as specifically excepted in § 54.1-2103 of this chapter, shall constitute the person, firm, partnership, copartnership, association or corporation, performing, offering or attempting to perform any of the acts enumerated ~~herein~~ above, a real estate broker or real estate salesperson ~~within the meaning of this chapter~~.

Drafting Note: No change in the law.

~~§ 54.1-2108. § 54-764.5. Protection of escrow funds, etc., held by broker.—~~Where escrow funds or other funds are held by the licensee or his agents and the ~~Commission~~ Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, ~~it~~ the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by the licensee, or if the court finds him unable to make such payment the expenses and fees shall be paid from the ~~fund~~ Virginia Real Estate Transaction Recovery Fund. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the ~~rules regulations~~ of the ~~Commission~~ Board, then the receiver's expenses and fees shall be paid

by the ~~Commission Board~~ . Such payments shall be paid from funds received by the ~~Commission Board~~ .

Drafting Note: No change in the law.

~~§ 54.1-2109. § 54-731.3. Death or disability of a broker.—Upon the death or disability of a licensed real estate broker who was engaged in a proprietorship or who was the only licensed broker in a corporation or partnership, his or her the estate, an adult family member of his or her family , or an employee of the licensee may be granted approval by the Virginia Real Estate Board to carry on the business of the deceased or disabled broker for 180 days following the death or disability of the broker solely for the purpose of concluding the business of the deceased or disabled broker. In the event no such person is available or suitable, the Board may appoint any other suitable person to terminate the business within 180 days.~~

Drafting Note: No change in the law.

~~§ 54.1-2110. § 54-733. Resident broker to maintain place of business in State Virginia .—Every resident real estate broker shall maintain a place of business in this State Commonwealth .~~

Drafting Note: No change in the law.

~~§ 54-745. Copies of records as evidence.—Copies of all records and papers in the office of the Commission, duly certified and authenticated by its seal shall be received in evidence in all courts equally and with like effect as the original.~~

Drafting Note: This section is being repealed. A similar section (proposed § 54.1-112) in Chapter 1 of the title revision covers the Department of Commerce, the Department of Health Professions, and their boards.

~~§ 54-746. Records open to public inspection. All records kept in the office of the Commission under authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the Commission.~~

Drafting Note: This section was enacted prior to the passage of the Virginia Freedom of Information Act. In addition, proposed § 54.1-108 in Chapter 1 of this title revision provides for the disclosure of official records of the two Departments and their boards.

~~§ 54-766. Chapter not to affect power of cities and counties.—Nothing in this chapter shall affect the power of cities or counties to tax, license and regulate real estate brokers. The requirements of this chapter shall be in addition to the requirements of any existing or future ordinances of any city or county so taxing, licensing or regulating real estate brokers.~~

Drafting Note: This section will be repealed at the direction of the Virginia Code Commission.

~~§ 54.1-2111. § 54-773. Consent to suits and service of process by nonresidents; manner of service .— A. Every nonresident applicant shall file with the Real Estate Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this State Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this State Commonwealth on the secretary Director of the Commission, such consent stipulating and agreeing Department of Commerce. The consent shall stipulate that such service of such process or pleadings on the secretary Director shall be taken and held in all courts to be as valid and binding as if due service had been made upon such the applicant in the State Commonwealth of Virginia. Such instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same.~~

~~§ 54-774. Manner of service. B. In case any Any process or pleadings mentioned in the preceding section (§ 54-773) are served upon the secretary of the Commission, it shall be by duplicate copies, one of which Director shall be filed by the Director in the his office of the Commission and the other a copy thereof immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed licensee at the last known address .~~

Drafting Note: Current §§ 54-773 and 54-774 were combined into one section and designated into subsections. The language at the end of Subsection A was stricken to conform with the changes the Virginia Code Commission made to similar provisions in the auctioneers' chapter. Amendments in Subsection B conform to similar changes in the auctioneers' chapter. Removes requirement that duplicate copies be served.

Article 2.

Virginia Real Estate Transaction Recovery Act.

§ 54-765.1. Short title. This article shall be known as the "Virginia Real Estate Transaction Recovery Act" and is hereinafter referred to as "the act."

Drafting Note: This section will be repealed and a definition for "act" placed in the definition section.

§ 54.1-2112 § 54-765.2 . Definitions.—As used in this article ; the following words and terms shall have the following meanings, unless some other meaning is clearly required by the context requires a different meaning :

"Act" means the Virginia Real Estate Transaction Recovery Act.

"Board" means the Virginia Real Estate Board.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this act.

"Director" means the Director of the Department of Commerce.

"Fund" means the Virginia Real Estate Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

"Regulant" means a person, partnership, association, corporation, agency, firm or any other entity licensed by the Virginia Real Estate Board as a real estate broker or real estate salesperson.

Drafting Note: No change in the law. The Real Estate Transaction Recovery Fund was revised by the 1987 General Assembly.

§ 54.1-2113 § 54-765.3 . Establishment and maintenance of fund, duty of Director, assessments of regulants.—A. Each initial regulant at the time of licensure, and each inactive regulant who applies to reinstate his license on an active status shall be assessed twenty dollars, which shall be specifically assigned to the fund. ~~Such initial~~ Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within thirty days.

B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of FDIC and FSLIC insurance, shall be secured under the Security for Public Deposits Act (§ 2.1-359 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of subdivisions (1), (2), and (4) of § 26-40, and in repurchase agreements secured by obligations of the United States government or any agency thereof. The Director shall maintain in ~~the Director's offices~~ *his office* an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall ~~forthwith~~ *immediately* inform the Board, which shall assess each regulant, excluding inactive regulants, within thirty days of such determination, a sum sufficient *to bring the balance of the fund to an amount of not less than \$400,000* , when combined with similar assessments of other regulants ; ~~to bring the balance of the fund to an amount of not less than \$400,000~~ . No regulant shall be assessed in a total amount ~~which is~~ *of* more than twenty dollars during any biennial license period or part thereof, ~~such~~ *the* biennial periods expiring on June 30 of each even-numbered year.

D. Notice to regulants of such assessments shall be by ~~first-class~~ *first class* mail, and payment of such assessments shall be made by ~~first-class~~ *first class* mail to the Director within forty-five days after the mailing to regulants of such notice.

E. If any regulant fails to remit the required payment mailed in accordance with subsection D within forty-five days of ~~such~~ *the* mailing, the Director shall notify ~~such~~ *the* regulant by ~~first-class~~ *first class* mail at the latest address of record filed with the Board. If no payment has

been received by the Director within thirty days after mailing the second notice, ~~such~~ the license shall be automatically suspended. ~~Such~~ The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. The costs of administering the act shall be paid out of interest earned on deposits constituting the fund. The remainder of ~~such~~ the interest, at the discretion of the Board, may be used for the purpose of providing research and education on subjects of benefit to real estate regulants or may accrue to the fund.

Drafting Note: No change in the law.

§ 54.1-2114 § 54-765.4 . Recovery from fund generally.—A. Whenever any person is awarded a final judgment in any court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct as defined in the act, and ~~such~~ the improper or dishonest conduct occurred during a period when ~~such~~ the individual or entity was a regulant and occurred in connection with a transaction involving the sale, lease, or management of real property by ~~such~~ the regulant acting in the capacity of a real estate broker or real estate salesperson and not in the capacity of a principal, or on his own account, ~~such~~ the person to whom such judgment was awarded may file a verified claim with the Director for a directive ordering payment from the fund of the amount unpaid upon ~~such~~ the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service or process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. ~~Such~~ The verified claim shall be filed with the Director no later than six months after ~~such~~ the judgment ~~becomes~~ became final.

4. The claimant shall not himself be (i) a regulant, (ii) the personal representative of a regulant, (iii) the spouse or child of the regulant against whom ~~such~~ the judgment was awarded, nor the personal representative of such spouse or child, or (iv) any lending or financial institution nor anyone whose business involves the construction or development of real property.

5. The claimant shall have made an investigation to determine whether or not the judgment debtor is possessed of real or personal property or other assets which are available to be sold or otherwise applied in satisfaction of ~~such~~ the judgment and shall file an affidavit that ~~such~~ an investigation has been made. Satisfactory evidence of the results of subdivision 6 below shall be submitted with this affidavit.

6. ~~Such~~ The investigation shall include but shall not be limited to (i) the conducting of debtor interrogatories, and (ii) the investigation of any listings held by the regulant and any commissions due thereby.

7. ~~Such~~ The investigation shall not have disclosed such real or personal property or other assets available to be so sold or applied, or ~~such~~ the investigation shall have disclosed certain of such assets, which shall be described in detail, and the claimant shall have taken all legally available actions and proceedings for such sale or application, and the amount so realized shall have been insufficient to satisfy ~~such~~ the judgment, which amount shall be stated together with the balance remaining due on the judgment after ~~such~~ the sale or application.

8. If the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523 (a) and obtain an order determining dischargeability of the debt.

B. The board shall promptly consider the application, the affidavit and investigation of the claimant administratively and, if the Board finds that there has been compliance with the conditions to which reference is made in this section, the Board shall issue a directive ordering payment to the claimant from the fund the amount unpaid ~~up~~ on ~~such~~ the judgment, subject to the limitations set forth in § ~~54-765.4~~ 54.1-2116 . The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 9-6.14:16 of the Administrative Process Act (§ 9-6.14:1 et seq.). Notwithstanding any other provision of law, the Board shall have the

right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

Drafting Note: No change in the law.

§ 54.1-2115 § 54-765.4:1 . Investigations.—Upon receipt of the notice of proceedings against the regulant the Board may cause its own investigation to be conducted.

Drafting Note: No change in the law.

§ 54.1-2116 § 54-765.5 . Limitations upon recovery from fund; certain actions not a bar to recovery.—A. The aggregate of claims by claimants against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, is limited to \$50,000. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund arising out of the same transaction, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims arising out of the same transaction exceeds \$50,000, such \$50,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

B. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, shall be limited to \$20,000, regardless of the number of claimants and regardless of the amount of the unpaid judgment of the claimant.

C. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with more than a single transaction involving the sale, lease, or management of real property is limited to \$100,000 during any biennial license period, ~~such~~ *the* biennial periods expiring on June 30 of each even-numbered year. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the fund involving such regulant for a period of not more than one year. After ~~such~~ *the* one-year period, if the aggregate of claims against ~~such~~ *the* regulant exceeds \$100,000, such \$100,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

D. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based shall be any sums included in ~~such~~ *the* judgment which represent interest, or punitive or exemplary damages. ~~Such~~ *The* claim against the fund may include court costs and attorneys' fees.

E. If, at any time, the amount of the fund is insufficient to satisfy any claims, claim, or portion thereof filed with the Board and authorized by the act, the Board shall, when the amount of the fund is sufficient to satisfy some or all of such claims, claim, or portion thereof, pay the claimants in the order that such claims were filed with the Board.

F. Failure of a claimant to comply with the provisions of subdivisions 1 and 2 of subsection A of § 54-765.4 54.1-2114 and the provisions of § 54-765.6 54.1-2117 shall not be a bar to recovery under this act if the claimant is otherwise entitled to such recovery.

Drafting Note: No change in the law.

§ 54.1-2117 § 54-765.6 . Participation by Board in proceedings.—Upon service of process as provided in subdivision 1 of § 54-765.4 54.1-2114 , the Board, the Director, or duly authorized representatives of the Board, shall then have the right to request leave of court to intervene.

Drafting Note: No change in the law.

§ 54.1-2118 § 54-765.7 . Payment of claim; assignment of claimant's rights to Board.—The Director shall, subject to the provisions of § 54-765.5 54.1-2116 , pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights against the regulant to the extent that such rights were satisfied from the fund.

Drafting Note: No change in the law.

§ 54.1-2119 § 54-765.8 . Revocation of license of regulant upon payment from fund.—Upon payment by the Director to a claimant from the fund as provided in § 54-765.7 54.1-2118 , the Board shall immediately revoke the license of the regulant whose improper or dishonest conduct, as defined in the act, resulted in ~~such~~ payment from the fund. ~~Such~~ *The* regulant whose license

was so revoked shall not be eligible to apply for a license as a real estate broker or real estate salesperson until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

Drafting Note: No change in the law.

~~§ 54.1-2120 § 54-765.0~~ . No waiver by Board of disciplinary action against regulant.—Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any regulant for any violation of ~~Chapter 18 (§ 54-730 et seq.) of Title 54 this chapter or the rules and Board regulations of the Board~~ , nor shall the repayment in full by a regulant of the amount paid from the fund on such regulant's account nullify or modify the effect of any disciplinary proceeding against such regulant for any such violation.

Drafting Note: No change in the law.

CHAPTER 22.

SOIL SCIENTISTS.

~~§ 54.1-2200. § 54-060.~~ Definitions.—As used in this chapter, unless the context requires a different meaning:

“Board” means the Board for Professional Soil Scientists.

“Department” means the Department of Commerce.

“Eligible soil scientist” means a person who possesses the qualifications specified in this chapter to become certified.

“Practice of soil evaluation” means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

“Soil” means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

“Soil evaluation” means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

“Soil science” means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

“Soil scientist” means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

“Virginia certified professional soil scientist” means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who has been granted certification by the Board.

Drafting Note: This chapter on soil scientists was enacted during the 1987 General Assembly Session. There has been no change in the law.

~~§ 54.1-2201. § 54-070.~~ Exceptions.—The certification program set forth in this chapter is voluntary and shall not be construed to prohibit:

1. The practice of soil evaluation by individuals who are not certified soil scientists as defined in this chapter;

2. The work of an employee or a subordinate of a certified soil scientist or of an individual who is practicing soil evaluation without being certified; or

3. The practice of any profession or occupation which is regulated by another regulatory board within the Department of Commerce.

Drafting Note: No change in the law.

~~§ 54.1-2202. § 54-072.~~ Board; membership; quorum ; ~~initial appointments; nominations~~ .—

Notwithstanding the provisions of ~~§ 54-1-27~~ 54.1-200, the Board for Professional Soil Scientists within the Department of Commerce shall be composed of five members appointed by the Governor as follows: four shall be certified professional soil scientists and one shall be a citizen member. Of the professional members, one shall have experience in soil mapping and classification, one shall have experience in soil suitability and land use, one shall have experience in teaching and research in soil science and one shall have experience with environmental protection regulations. The terms of the members shall be four years. ~~For the initial appointments, one shall be for a term of three years, two shall be for a term of two years and two shall be for a term of one year.~~

The Board shall annually elect a chairman from its membership. Three members of the Board, two of whom shall be soil scientists, shall constitute a quorum.

~~The professional soil scientist members initially appointed to the Board shall meet the qualifications provided in § 54-974.~~ The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional members of the Board and nominations may be made for the filling of the vacancy.

Drafting Note: Initial appointments to the Board have been made; therefore, provisions pertaining to initial appointments have been deleted. There has been no change in the law.

~~§ 54.1-2203. § 54-973.~~ Eligibility for certification.—Any person practicing or offering to practice as a soil scientist in this Commonwealth may submit to the Board evidence to the Board that such person is qualified of qualification to be certified as provided in this chapter. The Board shall may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.

Any individual who allows his certification to lapse by failing to renew the certificate or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of satisfactory evidence that he is practicing in a competent manner and upon payment of the prescribed fee.

Drafting Note: Changed “shall” to “may” to allow the Board discretion in certification process and to be consistent with proposed § 54.1-2204. Otherwise, there is no change in the law.

~~§ 54.1-2204. § 54-974.~~ Requirements for application for certification.—The Board may certify any individual applicant as a Virginia certified professional soil scientist who has submitted satisfactory evidence verified by affidavits that the applicant:

1. Is eighteen years of age or more;
2. Is of good moral character; and
3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

Drafting Note: No change in the law.

~~§ 54.1-2205. § 54-975.~~ Requirements for certification.—In order to be certified as a professional soil scientist, an applicant shall achieve a score acceptable to the Board on an examination in the principles and practice of soil evaluation and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a soils curriculum which has been approved by the Board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

2. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

3. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or

4. Have at least four years of experience in soil science research or as a teacher of soils curriculum in an accredited institution of higher education which offers an approved four-year program in soils and at least two years of soil evaluation experience, the quality of which

demonstrates to the Board that the applicant is competent to practice as a *professional* soil scientist.

Drafting Note: No change in the law.

§ 54.1-2206. § 54-976. Waiver of examination.—The Board may waive the requirement for examination pursuant to § 54-975 § 54.1-2205 upon written application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in the suspension or revocation of his certificate, if such other state, territory or possession recognizes the certificates issued by the Board.

Drafting Note: No change in the law.

§ 54.1-2207. § 54-977. Unprofessional conduct.—Any professional soil scientist who is certified as provided in this chapter shall be considered guilty of unprofessional conduct and subject to disciplinary action by the Board, if he:

1. Obtains his certification through fraud or deceit;
2. Violates or cooperates with others in violating any provision of this chapter, the Code of Professional Ethics and Conduct or any regulation of the Board;
3. Performs any act likely to deceive, defraud or harm the public;
4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation; or
5. Is convicted of a felony.

Drafting Note: No change in the law.

§ 54.1-2208. § 54-971. Unlawful representation as a certified professional soil scientist.—No person shall represent himself as a certified professional soil scientist unless he has been so certified by the Board. Any person practicing or offering to practice soil evaluation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional soil scientist without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

Drafting Note: No change in the law.

CHAPTER 23.

WATERWORKS AND WASTEWATER WORKS OPERATORS.

§ 54.1-2300. § 54-573.2. Definitions. As used in this chapter *unless the context requires a different meaning* :

(1)“Board” means the Board for Certification of Operators of Water Waterworks and Wastewater Works created by this chapter Operators .

(2) “Certificate” means a certificate of competency issued by the Board certifying that an operator has met the requirements for a specified operator classification.

(3) “Waterworks” means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving less than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

(4) “Wastewater works” means each system of (a) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, (b) sewerage systems or sewage treatment works serving less than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board, and (c) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

(5)“Operator” means any individual employed or appointed by any owner as defined in this section , and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control water waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of

~~water waterworks~~ or wastewater works.

(6)“Owner” means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this State *Commonwealth* or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain ~~water waterworks~~ or wastewater works.

(7)“Person” means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.

“Wastewater works” means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

“Waterworks” means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

Drafting Note: Terms were placed in alphabetical order. The definition of “certificate” was removed because waterworks and wastewater works operators are licensed. References to certification in this chapter were changed to licensure due to current § 54-573.18. Otherwise, no change in the law.

§ 54.1-2301. ~~§ 54-573.3.~~ Board for Certification of Water ~~Waterworks~~ and Wastewater Works Operators ~~continued; composition; qualifications; terms of members ; membership; terms; duties .~~ – A. The Board for ~~the Certification of Water Waterworks~~ and Wastewater Works Operators is ~~hereby continued.~~ The Board shall consist of seven members as follows : ~~one shall be the Director of the Division of Engineering of the State Department of Health, one shall be the Executive Secretary of the State Water Control Board, one shall be a currently employed as a waterworks operator having a valid certificate license of the highest classification issued by the Board, one shall be a currently employed as a wastewater works operator having a valid certificate license of the highest classification issued by the Board, one shall be a faculty member of a state university or college whose principal field of teaching is management or operation of water waterworks or wastewater works, one shall represent the a representative of an owner of a waterworks, and one shall represent the a representative of an owner of a wastewater works.~~ No owner shall be represented on the Board by more than one representative or employee operator. The term of ~~board~~ Board members shall be four years.

§ 54-573.1. Purpose of chapter. It is the policy of the Commonwealth of Virginia and the purpose of this chapter to protect the public health, welfare, and property; to conserve and protect the water resources of the State; and to require examination of operators and certification of their B. The Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and to operate ~~water waterworks~~ and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth .

Drafting Note: Sections 54-573.1 and 54-573.3 were merged into one section. References to certification were changed to licensure since § 54-573.18 requires the licensure of the operator of a waterworks or wastewater works. The name of the Board was changed at the direction of the Virginia Code Commission.

§ 54.1-2302. ~~§ 54-573.18.~~ License required.— ~~In order to~~ No person shall operate a water ~~waterworks~~ or wastewater works ; it shall be necessary to hold ~~without~~ a requisite valid license.

Drafting Note: No change in the law.

SUBTITLE III PROFESSIONS AND OCCUPATIONS REGULATED BY BOARDS WITHIN THE DEPARTMENT OF HEALTH PROFESSIONS

CHAPTER 24.

GENERAL PROVISIONS.

§ 54.1-2400. General powers and duties of health regulatory boards.—The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure.

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To take appropriate disciplinary action for violations of applicable law and regulations.

Drafting Note: This is a new section which includes only those powers and duties common to all health regulatory boards.

§ 54-958. Selection and qualifications of hearing officers.—The Director, at the request of any health regulatory board, shall select a person whose name appears on a list of hearing officers, each of whom shall have been admitted to practice law in this State for at least two years immediately preceding his appointment. This list shall be prepared by and kept in the office of the Executive Secretary of the Supreme Court.

Drafting Note: This section will no longer be necessary because § 9-6.14:14.1 sets out standards for hearing officers and their selection.

§ 54-959. Presiding officer; participation of board in hearing; disqualification of hearing officer or board member.—At the request of any party to a hearing before any health regulatory board, a hearing officer shall be appointed and preside in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). The board itself shall determine whether the hearing officer is to hear the case alone or whether the board itself is to hear the case with the hearing officer.

A hearing officer or board member shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns any board member, the issue shall be determined by the hearing officer. Where the request concerns the hearing officer, the issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

Drafting Note: This section will no longer be necessary because the substance of this section is included in General Provisions for the title.

§ 54-950.2:1. Unlawful acts; proceedings in equity; penalty. The provisions of § 54-1.20 pertaining to unlawful acts and proceedings in equity to enjoin any person, partnership, corporation or other entity from engaging in any such unlawful act shall apply mutatis mutandis to the Department of Health Regulatory Boards and the regulatory boards within the Department.

Drafting Note: This section is no longer necessary. See the general provisions for the title.

§ 54.1-2401. § 54-961. Monetary penalty.—Any person licensed, registered or certified by any health regulatory board within the Department who violates any provision of law statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the

monetary penalty provided in this section. If it shall have been determined by a majority vote of such the board determines that a respondent has violated any provision of law statute or regulation pertaining to the board, that board it shall proceed to determine the amount of the any monetary penalty ; if any, to be imposed for the such violation, which shall not exceed the sum of \$1,000 for each violation. Such The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

Drafting Note: There is no change in the law. The new sentence related to the Literary Fund has been inserted for clarity.

§ 54.1-2402 § 54-950.3. Citizen members on health regulatory boards.—Citizen members appointed to boards within the Department of Health Regulatory Boards Professions after July 1, 1986, shall participate in all matters, but shall not vote on any matter which pertains to issuance, suspension, renewal or revocation of licenses granted by the respective boards. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to powers and terms of citizen members on such boards shall not apply to the Virginia State Board of Medicine or to the Virginia Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-18.1 § 54.1-107 of this Code title .

Drafting Note: There is no change in the law.

§ 54.1-2403. § 54-950.1. Certain advertising prohibited.—No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

Drafting Note: There is no change in the law.

CHAPTER 25.

DEPARTMENT OF HEALTH PROFESSIONS.

§ 54.1-2500. § 54-950. Definitions.—As used in this chapter unless the context requires a different meaning :

"Board" means the Virginia Board of Examiners for Audiology and Speech Pathology, Virginia Board of Dentistry, Virginia State Board of Medicine, Virginia State Board of Nursing, State Board of Examiners for Nursing Home Administrators, State Board of Pharmacy, Virginia Board of Optometry, Virginia Board of Funeral Directors and Embalmers, Virginia Board of Veterinary Medicine, Virginia Board of Professional Counselors, Virginia Board of Psychology or the Virginia Board of Social Work.

"Council" means the Council on Health Regulatory Boards.

"Department" means the Department of Health Regulatory Boards.

"Board" means the Board of Health Professions.

"Department" means the Department of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

Drafting Note: This section has been reworded, but there is no substantive change in the law.

§ 54.1-2501. § 54-950.1. Creation of Department established .— There is hereby created, The Department of Health Professions established within the executive branch responsible to the Governor , a Department of Health Regulatory Boards : The Department shall be under the supervision and management of the Director of the Department of Health Regulatory Boards .

Drafting Note: There is no substantial change in the law.

§ 54-949. Legislative intent.—By the enactment of this chapter it is the purpose of the General Assembly to unify and coordinate the administrative, enforcement, education, and legislative activities of the several health regulatory boards to enable them to discharge their responsibilities more effectively and efficiently, for the protection of the health and welfare of the people of the Commonwealth of Virginia and to improve the effectiveness of the health

professional regulatory system.

Nothing in this chapter shall be construed to remove from any individual board any of its statutory powers.

Drafting Note: There are no substantive changes in the law. The provisions of § 54-949 have been struck as they are unnecessary.

§ 54.1-2502. ~~§ 54-960.1.~~ Use of consultants in investigations.—The Department of Health Professions shall establish a roster of consultants in health care specialties for each health regulatory board, as required. The Department shall enter into a contract with each consultant to assist in the investigation and evaluation of violations of law, rules statute or regulations of the health regulatory boards and to provide expert testimony as necessary in any subsequent administrative hearing. The cost of such the consultants shall be paid for by the board for which the services are provided.

Any consultant under contract to the Department shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties unless such person acted in bad faith or with malicious intent.

Drafting Note: There is no change in the law.

§ 54.1-2503. ~~§ 54-950.2.~~ Boards within Department.—The following boards are hereby transferred to and continued included within the Department: Virginia Board of Examiners for Audiology and Speech Pathology, Virginia State Board of Medicine, Virginia Board of Optometry, Virginia Board of Dentistry, State Board of Pharmacy, Virginia State Board of Nursing, State Board of Examiners for Nursing Home Administrators, Virginia Board of Funeral Directors and Embalmers, Virginia Board of Veterinary Medicine, Virginia Board of Professional Counselors, Virginia Board of Psychology and the Virginia Board of Social Work Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Medicine, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Professional Counselors, Board of Psychology, Board of Social Work and Board of Veterinary Medicine .

Drafting Note: There are no substantive changes in the law. The names of the boards have been standardized and listed in alphabetical order.

§ 54.1-2504. ~~§ 54-954.1.~~ Appointment of Director.—The Director of the Department of Health Regulatory Boards Professions shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

Drafting Note: No changes in the law have been made.

§ 54.1-2505. ~~§ 54-955.~~ Powers and duties of Director of Department.—The Director of the Department shall have the following powers and duties :

- A. Supervise 1. To supervise and manage the Department;
- B. Perform 2. To perform or consolidate such administrative services or functions which as may assist the operation of any one or all of the boards;
- C. Prepare 3. To prepare , approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
- D. Provide 4. To provide such office facilities as will allow the boards to carry out their duties;
- D1. Employ such 5. To employ personnel as may be required for the proper performance of the responsibilities of the Department subject to Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of this Code and within the limits of appropriations made therefor by law ; ;
- E. Serve 6. To receive as a clearinghouse for all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of such complaints;
8. To track monitor the status of actions taken under the auspices of the boards regarding such complaints until the closure of each case to assure that the process is responsive to the public, fair and equitable ; and
9. To provide investigative and such other services as needed by the boards to enforce their

respective laws and rules statutes and regulations;

~~F. Provide 10. To provide staff to assist in the performance of the duties of the Council on Board of Health Regulatory Boards Professions ;~~

~~G. [Repealed.]~~

~~H. Collect 11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, Department and Council Board of Health Professions shall be paid;~~

~~I. Make 12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;~~

~~J. Accept 13. To accept grants from the United States government and , its agencies and instrumentalities thereof , and any other source. To these ends, The Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;~~

~~K. Make 14. To promulgate ; and from time to time revise ; such rules and regulations as may be necessary for the administration of the Department;~~

~~L. With the prior approval of the president of the appropriate regulatory board or his designee, 15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, without delay to the Attorney General or the appropriate Commonwealth's attorney any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Board president or his designee and the Director , that a person licensed by any of the health regulatory boards has violated any provision of criminal law relating to the manufacture, distribution manufacturing, distributing , dispensing, prescribing or administering of drugs other than drugs classified as Schedule VI drugs and devices in § 54-524.84:13 . For the purpose of this section, the terms manufacture, distribution manufacturing, distributing , dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by § 54-524.56 Chapter 34 (§ 54.1-3400 et seq.) of this title and which do not indicate a pattern of criminal behavior;~~

~~16. To keep records of the names and qualifications of registered, certified or licensed persons; and~~

~~M. Exercise such 17. To exercise other powers and perform such other duties as may be required of the Director by the Governor.~~

Drafting Note: No substantive changes have been made in the law.

~~§ 54.1-2506. § 54-960. Enforcement of laws by Director and investigative personnel; authority of investigative personnel.—The Director and investigative personnel appointed by him shall be sworn to enforce the applicable statutes and regulations pertaining to the Department and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board . As provided in § 9-6.14:13 of the Administrative Process Act, the Director ; or in his absence a designated subordinate, designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation within the Department's jurisdiction.~~

All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle , (ii) serve and execute any warrant, paper or process issued by any court or magistrate or by the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) to request and receive criminal history information under the provisions of § 19.2-389 of the Code.

Drafting Note: There is no change in the law.

~~§ 54.1-2507. § 54-951. Board on Health Regulatory Boards continued as Council on Board of Health Regulatory Boards Professions ; membership appointment , appointments, and terms ; of office.— and removal of members.—The Virginia Board on Health Regulatory Boards is continued and shall hereafter be known as the Council on Health Regulatory Boards. The Council on Board~~

of Health Regulatory Boards Professions shall consist of one member from each health regulatory board appointed by the Governor ; , and five members to be appointed by the Governor from the Commonwealth at large. No member of the Council on Board of Health Regulatory Boards Professions who represents a health regulatory board shall serve as such following the time when after he ceases to be a member of a board. The nonboard members appointed by the Governor shall be subject to confirmation by the General Assembly ; and shall serve for four-year terms ; and no member shall serve for more than two full successive terms . The appointment of the additional nonboard member made by the Governor in 1986 shall be for a term of four years and thereafter all appointments shall be for terms of four years each. The Governor may remove any member he has appointed to the Council on Health Regulatory Boards for malfeasance, misfeasance, incompetency, gross neglect of duty or for unlawful or willful neglect of duty .

Drafting Note: There are no substantive changes in the law; however, some redundant language has been struck. Lanuguage duplicated elsewhere in the Code has also been struck. The name of the Council has been revised to the Board of Health Professions.

~~§ 54-2508. § 54-953.~~ Chairman and ; meetings of Council Board; quorum .—The chairman of the Council on Board of Health Regulatory Boards Professions shall be elected by the Council Board from the its members of the Council . The Council Board shall meet at least once quarterly and may hold such other additional meetings during the year as may be necessary to perform its duties. A majority of the Council Board ; including the chairman, shall constitute a quorum for the conduct of business at any meeting .

Drafting Note: Minor changes have been made to the catch line. No changes have been made in the law.

~~§ 54.1-2509. § 54-954.~~ Reimbursement of Council Board members for expenses.— Members of the Council representing individual boards shall receive reimbursement for expenses to which they would be entitled were they performing duties incident to membership on their respective boards from the funds of such boards. The nonboard members appointed by the Governor shall receive reimbursement for expenses from the funds of the boards. All members of the Council Board shall be compensated in accordance with § 2.1-20.3 of the Code from the funds of the Department .

Drafting Note: There are no substantive changes in the law.

~~§ 54.1-2510. § 54-955.1.~~ Powers and duties of Council on Board of Health Regulatory Boards Professions .—The Council on Board of Health Regulatory Boards Professions shall have the following powers and duties:

A. Evaluate 1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;

B. Evaluate each 2. To evaluate all health care profession professions and occupation occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Council Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Council Board shall recommend for approval by to the General Assembly next convened a regulatory system necessary to establish the appropriate degree of regulation required ;

C. [Repealed-]

D. [Repealed-]

E. Review 3. To review and comment on the budget for the Department;

F. Provide 4. To provide a means of citizen access to the Department;

G. Provide 5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;

H. Monitor 6. To monitor the policies and activities of the Department , serve as a forum for resolving conflicts between among the Boards health regulatory boards and between the health regulatory boards and the Department and have the right of access to departmental information;

I. Advise 7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;

J. ~~Make~~ 8. *To make* bylaws for the government of the ~~Council on~~ *Board of Health Regulatory Boards Professions* and the proper fulfillment of its duties under this chapter;

K. ~~Promote~~ 9. *To promote* the development of standards to evaluate the competency of the professions and occupations represented on the ~~Council on Board of Health Regulatory Boards~~ ;

L. ~~As it determines appropriate,~~ 10. *To review and comment , as it deems appropriate,* on all regulations promulgated by the boards and on all regulations or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the ~~Council Board~~ on proposed board regulations;

M. ~~Review~~ 11. *To review* periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals; *and*

N. ~~Examine~~ 12. *To examine* scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts.

Drafting Note: There are no substantive changes in the law.

CHAPTER 26.

AUDIOLOGY AND SPEECH PATHOLOGY.

§ 54.1-2600 § 54-83.1:5 . Definitions.—As used in this chapter, unless the context requires otherwise a different meaning :

(a), (b) [Repealed.]

(c) “Board” shall mean the Virginia Board of Examiners for Audiology and Speech Pathology.

(d) “The practice of audiology or speech pathology” shall mean the rendering or offering to render to communicatively impaired members of the public for a fee, monetary or otherwise, any nonmedical service, not authorized or permitted by some other licensure law of this State, relating to the prevention, diagnosis, evaluation and treatment of disorders or impairments of speech, language, voice or hearing, whether of organic or nonorganic origin. A person is deemed to be practicing audiology or speech pathology if he offers such services to the public under any descriptive name or title which would indicate that such professional services are being offered.

(e) “Audiologist” shall mean any person who examines, tests, evaluates, treats or counsels, for which a fee may be charged, persons having or suspected of having disorders or conditions affecting hearing and communicative disorders related thereto or who assists persons in the perception of sound and who is not authorized or permitted by some other licensure law of this State to perform any such services.

(f) “Speech pathologist” shall mean any person who examines, tests, evaluates, treats or counsels, for which a fee may be charged, persons having or suspected of having disorders or conditions affecting speech, voice or language and who is not authorized or permitted by some other licensure law of this State to perform any such services.

“Audiologist” means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services.

“Board” means the Board of Audiology and Speech Pathology.

“Practice of audiology or speech pathology” means the performance for compensation of any nonmedical service, not authorized by another regulatory or health regulatory board, relating to the prevention, diagnosis, evaluation and treatment of disorders or impairments of speech, language, voice or hearing, whether of organic or nonorganic origin. Any person offering services to the public under any descriptive name or title which would indicate that professional audiology or speech pathology services are being offered shall be deemed to be practicing audiology and speech pathology.

"Speech pathologist" means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting speech, voice or language and is not authorized by another regulatory or health regulatory board to perform any such services.

Drafting Note: No change in the law. The definitions in this section have been alphabetized.

§ 54.1-2601 § 54-83.1-7 . Exemptions.— ~~Nothing in this~~ This chapter shall be construed not :

(a) ~~To prevent 1. Prevent~~ any person who is licensed in this State under any other licensure law from engaging, individually or through his employees, in the appropriate activities of the profession or service for which he is licensed notwithstanding that such activities may involve the treatment of or assistance to communicatively impaired individuals, nor or from using appropriate descriptive words, phrases or titles to refer to such activities, profession or service his services ;

(b) ~~To prevent 2. Prevent~~ any person in the employ of employed by a federal, State state , county or municipal agency, or a duly chartered an educational institution as a speech or hearing specialist or therapist from performing such services as are part of the regular duties of his office or position with such agency or institution for which no fee is paid directly or indirectly by the recipient of such service, provided any such person who is not licensed under this chapter is not held out to the public as a duly licensed audiologist or speech pathologist ;

(c) ~~To prevent 3. Prevent~~ any student, intern or trainee in audiology or speech pathology, pursuing a course of study at an accredited university or college, or working in a recognized training center, under the direct supervision of a licensed or certified audiologist or speech pathologist, from performing such services as constitute constituting a part of his supervised course of study ; provided such student, intern or trainee receives no fee for such services and does not hold himself out to the public as being qualified to practice either such profession independently ;

(d) ~~To prevent 4. Prevent~~ a duly licensed audiologist or speech pathologist from employing or using the services of such unlicensed persons as he may deem necessary or appropriate to assist him in the his practice of audiology or speech pathology or to aid such persons in acquiring further training and experience, nor shall such supportive or in-training personnel be required to be licensed under this chapter so long as they work under such direct supervision and control of a licensed audiologist or speech pathologist as the Board may require and do not hold themselves out to the public as being qualified to practice either such profession independently ;

(e) ~~To authorize 5. Authorize~~ any person, not unless otherwise licensed to do so, to prepare, order, dispense, alter or repair hearing aids or appurtenances thereto parts of or attachments to hearing aids for a monetary consideration ; provided, however that . However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research only, but not commercially .

Drafting Note: No change in the law.

§ 54.1-2602 § 54-83.1-8 . Board continued; qualifications and terms of members; membership; officers; duties of Director of Department .— (a) The Virginia Board of Examiners for Audiology and Speech Pathology is continued. The Board shall be composed consist of seven members as follows: two licensed audiologists, two licensed speech pathologists, one otolaryngologist, and two citizen members. The terms of Board members shall be four years. All professional members of the Board shall have actively practiced their professions for at least two years prior to their appointments.

(b), (c) [Repealed-]

§ 54-83.1-10. Officers; duties of Director of Department of Commerce; oaths; members may administer oaths and take testimony.— The members of the Board shall elect annually from its membership a chairman and a vice-chairman. The administrative work of the Board shall be performed by the Director of the Department of Commerce who Health Professions shall also act as secretary-treasurer of the Board and who shall keep a full and complete record of all the proceedings and accounts of the Board ; and of its accounts, which shall be open to public inspection at all reasonable times .

Every person appointed a member of the Board shall, before entering upon the duties of his office, take his oath of office before some officer authorized to administer an oath and file a certificate of the oath with the secretary of the Board. Any member of the Board in the official discharge of his duties may administer oaths and take testimony concerning any matter within

the jurisdiction of the Board.

§ 54-83.1:8.1. Powers and duties of Board. The powers and duties of the Board shall be as follows:

1. To establish the qualifications of applicants for certification or licensure, provided that all such qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure, including preparation, administration and grading of examinations.

3. To certify or license qualified applicants.

4. To levy and collect fees for certification or licensure and renewal thereof that are sufficient to cover all expenses for the administration and operation of both the Department and the Board.

5. To promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

6. To ensure that inspections are conducted relating to the practice of each certified or licensed practitioner to ensure that such practitioner is conducting his practice in a competent manner and within the regulations promulgated by the Board.

7. To revoke, suspend or fail to renew a certificate or license which it has authority to issue for just causes as are enumerated in regulations of the Board.

8. To receive complaints concerning the conduct of any person whose activities are regulated by the Board and take appropriate disciplinary action if warranted.

9. To ~~authorized~~ to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

10. To establish agreements with other jurisdictions for the recognition of certificates and licenses issued by such other jurisdictions to the extent deemed appropriate by the Board.

Drafting Note: The paragraph on oaths is no longer necessary as § 49-1 requires all officers of the Commonwealth to take an oath. General powers of health regulatory boards are provided in § 54.1-2400.

§ 54.1-2603 § 54-83.1:011 . License required.—In order to engage in the practice of audiology or speech pathology, it shall be necessary to hold a requisite valid license.

Drafting Note: No change in the law.

CHAPTER 27.

DENTISTRY.

Article 1.

Board of Dentistry.

§ 54.1-2700. § 54-200.1. Definitions.— As used in this chapter unless the context requires a different meaning:

“Board” means the Board of Dentistry;

(a)“Dental hygiene ;“ for the purpose of this chapter, includes means cleaning and polishing teeth and assisting the members of the dental profession in providing oral health care and oral health education to the public;

(b)“Dental hygienist” means a person trained in the practice of and practicing dental hygiene;

“Dentist” means a person who has been awarded a degree in and is licensed to practice dentistry;

"Dentistry" means the branch of the healing arts concerned with the prevention, diagnosis, and treatment of diseases and restoration to health of the structure of the oral cavity, including teeth and surrounding and supporting structures;

(c) "License" means the certificate document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in this State Commonwealth ; or upon

(d) " registration certificate," means the biennial certificate of for renewal of license to continue the practice of dentistry or dental hygiene in this State Commonwealth ; .

(e) "Board" means the Virginia Board of Dentistry as continued by § 54-153 of the Code of Virginia.

Drafting Note: The definitions of dentist and dentistry have been added.

§ 54.1-2701. Exemptions. – § 54-149. Physicians, surgeons, and certified nurses exempted. Nothing in this chapter shall apply (i) to a legally qualified physician or surgeon unless he practices dentistry as a specialty, or (ii) to a nurse practitioner duly certified by the State Board of Nursing and the State Board of Medicine in the performance of his or her specialty except that intraoral procedures shall be performed only under the direct supervision, direction and control of a licensed dentist.

§ 54-150. Dentists in federal service exempted. Nothing in this chapter shall apply to a dental surgeon of the United States army, navy, air force, public health service, or Veterans Administration, in the discharge of his official duties.

§ 54-151. Dentists licensed prior to certain date. All persons licensed to practice dentistry or any of the branches thereof and so registered, with the Virginia State Board of Dental Examiners on March 19, 1930, shall be entitled to continue in the practice of the profession or any of the branches thereof, subject to the several provisions of this chapter.

§ 54-200.23. Dental hygienists in federal service exempted. Nothing in this chapter shall apply to a dental hygienist of the United States army, navy, air force, public health service, or Veteran's Administration in the discharge of his official duties.

This chapter shall not:

1. Apply to a licensed physician or surgeon unless he practices dentistry as a specialty;
2. Apply to a nurse practitioner certified by the Board of Nursing and the Board of Medicine except that intraoral procedures shall be performed only under the direct supervision of a licensed dentist;
3. Apply to a dentist or a dental hygienist of the United States Army, Navy, Air Force, Public Health Service, or Veterans Administration; or
4. Prevent an office assistant from performing usual secretarial duties or other assistance as set forth in regulations promulgated by the Board.

Drafting Note: The new section incorporates all of the provisions of §§ 54-149, 54-150, 54-151, and 54-200.23 as well as part of § 54-172.

§ 54.1-2702. § 54-153. Board continued ; membership; terms of office; officers; quorum. – The Virginia State Board of Dental Examiners, is continued and is redesignated the Virginia Board of Dentistry, sometimes referred to in this chapter as the Board.

§ 54-154. Number and appointment of members; vacancies; vote. The Board of Dentistry shall consist of eight members to be appointed by the Governor, and all vacancies occurring on the Board shall be filled by him as follows: six members shall be dentists, one member shall be a citizen member and one member shall be a dental hygienist. However, the dental hygienist shall not vote on any matters of the Board which involve issuance, suspension, renewal or revocation of a license to practice dentistry in the Commonwealth of Virginia .

§ 54-157. Qualifications of members. The professional members of the Board shall be licensed practitioners of dentistry ; or dental hygiene, of acknowledged ability in the profession, and not connected with or interested in any dental school, college, university or dental department of a university, commercial dental laboratory, or dental supply business and must have practiced dentistry or one of its branches, or dental hygiene ; in this Commonwealth for a period of not less than at least three years.

§ 54-155. ~~Terms of office.~~ As the ~~The~~ terms of office respectively of the members expire by limitation the Governor shall appoint, to fill the vacancies so occasioned, qualified persons whose terms shall be for five years from the day on which that of their immediate predecessors expired .

§ 54-158. ~~Limitation on terms.~~ No member of the Board shall be eligible to serve for or during more than two successive terms.

§ 54-161. ~~Officers.~~ The Board shall annually choose a president and a secretary-treasurer :
and

§ 54-162. ~~Meetings and quorum; proceedings open to inspection.~~ The Board shall meet at least once in each year or oftener if necessary, in the discretion of the Board, and *annually* at such times and places as it may deem proper. A majority of the members of the Board shall at all times constitute a quorum for the transaction of its business, and the proceedings thereof shall at all reasonable times be open to public inspection .

Drafting Note: There is no change in the law. The limitation of terms is now included in § 54.1-107.

§ 54-163. ~~Bylaws and regulations.~~ The board shall have full powers to make bylaws and necessary regulations for the government of the Board and the proper fulfillment of its duties under this chapter. All rules and regulations of the Board shall be promulgated in accordance with the provisions of chapter 1-1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code.

Drafting Note: New § 54.1-2400 addresses the general powers and duties of health regulatory boards. Therefore, this section is unnecessary. No change in the law.

§ 54-165. ~~Receipts paid into State treasury and expenses paid therefrom.~~ All funds accruing under this chapter shall be paid into the State treasury. The expenses of maintaining the Board shall be paid from the State treasury, upon voucher properly approved in conformity to law, out of funds accruing to the State Treasurer under the provisions of this chapter, or such funds as are available for the payment of such accounts.

Drafting Note: New § 54.1-2505 includes the authority of the Director "to collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, Department and the Board of Health Regulation shall be paid." There is no change in the law as the present law (see § 54-955) includes this authority.

§ 54-166. ~~Employment of investigators.~~ The Board may engage a suitable person or persons to assist it in any necessary investigation of complaints filed with it against illegal practitioners or other violators of this chapter. Such persons shall be authorized to serve and execute process issued by a court under the provisions of this chapter and to serve and execute any papers or process issued by the Board under authority of this chapter.

Drafting Note: § 54.1-2505 lists among the powers of the Director "to employ personnel..." The deletion of this section is not a change in the law (see § 54-955 of the Code of Virginia).

§ 54.1-2703. § 54-167. ~~Inspection of dental offices and laboratories.~~—Every member and employee of the Board, when *properly* identified as herein provided , shall be authorized, during ordinary business hours, to enter and inspect any dental office or dental laboratory for the purpose of enforcing the provisions of this chapter. Each member or employee of the Board shall, when inspecting any dental office or laboratory, carry on his person and exhibit, when properly requested, a card stating his name and connection with the Board, verified by the signature of the president and secretary-treasurer and the seal of the Board; provided, however, in any instance wherein a dental laboratory is the subject of an inspection pursuant to the provisions of this section or of § 54-147.2, the inspection shall be conducted by two or more members or employees of the Board, at least one of whom shall be a laboratory operator or technician, to be selected by the Board from a roster of eight names submitted annually by the Board of Virginia State Dental Laboratories Association, and such person or persons shall concur in or object to any report submitted to the Board as a result of such inspection. If no roster shall be submitted by January 15 in any year, or if submitted and, after reasonable notice to him, no laboratory operator or technician from said roster will voluntarily assist in making the inspection, the Board may proceed with its inspection without the presence of a laboratory operator or technician.

Drafting Note: Authorization for the inspection of dental offices and laboratories has been specifically retained to supplement the authority of § 54.1-2506.

§ 54.1-2704. § 54-156. ~~Nominations by Virginia Dental Association and Old Dominion State Dental Society .—~~ Each professional appointment to the Board may be made from nominations *Nominations may be made for each professional vacancy from a list of three names* submitted

to the Governor ; ~~or to the Governor-elect~~, by the Virginia Dental Association, by the Old Dominion State Dental Society , ~~and the Virginia Dental Hygienists' Association~~ ; ~~or by any licensed dentist or licensed dental hygienist~~ . The Virginia Dental Association and the Old Dominion State Dental Society shall nominate at least three persons for each professional vacancy. Nominations are to be made to the Governor by June 1 of each year. ~~Further, any licensee of this chapter may submit nominations to the Governor.~~ The Governor may notify the Virginia Dental Association ~~and~~ , the Old Dominion State Dental Society ~~and the Virginia Dental Hygienists' Association~~ promptly of any professional vacancy other than by expiration ~~and like nominations may be made by such organizations or their executive committees or by any licensed dentist or licensed dental hygienist for the filling of the vacancy~~ . In no case shall the ~~The~~ Governor ~~shall not~~ be bound to make any appointment from among the nominees.

§ 54-159. ~~Removal of members.~~—The Governor may remove any member of the Board for misconduct, incapacity, or neglect of duty and he shall be the sole judge of the sufficiency of the cause for removal. He shall report every such removal at once to the General Assembly if it is in session, and if not at the beginning of the next session.

§ 54-160. ~~Temporary substitute for absentee; declaring vacancy for failure to attend meetings.~~—Upon failure of any member of the Board to attend a meeting thereof the members of the Board present, if so desired, may appoint a substitute to temporarily fill the vacancy for that meeting, and for continued failure or inability of a member of the Board to attend two consecutive meetings thereof, the Board may declare a vacancy existing.

Drafting Note: All sections on nominations are being conformed. New section 54.1-107 contains language referencing § 2.1-43 B. Therefore, the provisions in §§ 54-159 and 54-160 are no longer necessary.

§ 54.1-2705. ~~§ 54-176.~~ Investigation of applicant for license.—The Board shall ~~inquire into~~ investigate the qualifications and truthfulness on registration of any applicant for a license issued pursuant to this article to *practice dentistry or dental hygiene* , and for such purposes shall have power to send for witnesses, papers and documents, and administer oaths. The cost of such inquiry shall be borne by the applicant.

Drafting Note: No change in the law.

§ 54.1-2706. ~~§ 54-187.~~ Grounds for revocation ~~Revocation~~ or suspension in general ; other sanctions and monetary penalties .— A. The Board may revoke or suspend the license of any person licensed pursuant to Article 3 (§ 54-168 et seq.) of this chapter, impose other lesser sanctions and, if the person is not criminally prosecuted, impose a monetary penalty not in excess of \$500 ~~refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any 1~~ or more of the following causes:

1. Fraud, deceit or misrepresentation in obtaining a license ; ~~or the presentation to the Board of any diploma, license or certificate, illegally or fraudulently obtained ; or~~

2. The ~~commission~~ of a criminal operation, ~~or the conviction of a any felony ; or the conviction of a any crime involving moral turpitude; or~~

3. Chronic or persistent inebriety, or addiction to drugs, to such an extent as to render ~~Use of alcohol or drugs to the extent that such use renders him unsafe or unreliable as a practitioner of to practice dentistry ; or such gross immorality as tends to bring reproach upon the dental profession or dental hygiene ; or~~

4. Any unprofessional conduct ; ~~or any unprofessional conduct likely to defraud or to deceive the public or the commission of any fraud upon the public or individual patients in obtaining or attempting to obtain practice ; or~~

5. Intentional ~~misconduct~~ or negligent conduct in the practice of dentistry ~~or dental hygiene~~ which causes or is likely to cause injury to a patient or patients; ~~or~~

6. The employment of ~~Employing or assisting unlicensed persons ; or of any person whose license has been finally suspended or revoked, to perform work which under this chapter can only be legally done by a person holding a license whom he knew or had reason to believe were unlicensed to practice dentistry in this Commonwealth; however, a person whose license has been finally suspended or revoked may be employed pending an appeal or dental hygiene ; or~~

7. Publishing or causing to be published in any manner an advertisement relating to his

professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates such other regulations as may be promulgated by the Board governing advertising; or

8. Accepting employment by or working in the office of any individual, firm or corporation that is violating any of the provisions of this section for which a license may be revoked or suspended, and failing to sever such relationship after notice in writing so to do from the Board; or

9. 8. Knowingly taking the impressions for or using the services of any person, firm or corporation violating any of the provisions of § 54-147.2 *Mental or physical incompetence to practice his profession with safety to his patients and the public* ; or

10. Giving aid or assisting any unlicensed person in performing any dental operation upon human beings in this Commonwealth; or

11. Willfully permitting a dental hygienist to violate the law or to violate a rule or regulation of the Board; or

12. 9. Knowingly violating *Violating* , assisting, or inducing others to violate any provision of this chapter or any substantive and nonprocedural rule or Board regulation of the Board ; or

13. 10. Conducting his practice in a manner contrary to the standards of ethics of the applicable branch of dentistry or dental hygiene or in such a manner as to make such practice presenting a danger to the health and welfare of a his patients or to the public; or inability to practice dentistry with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause based upon an investigation by the Board or its designated representative of an allegation or allegations of misconduct, unethical practice, or disabling physical or mental condition, have authority to compel a person licensed pursuant to Article 3 (§ 54-168 et seq.) of this chapter to submit to mental or physical examination by physicians mutually acceptable to all parties. Failure of a person licensed pursuant to Article 3 (§ 54-168 et seq.) of this chapter to submit to such examination when directed shall constitute an admission of the allegations, unless the failure was due to circumstances beyond such person's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. A person whose license is revoked or suspended pursuant to this subsection shall, at reasonable intervals, be afforded an opportunity to demonstrate that such person can resume the competent practice of dentistry with reasonable skill and safety to patients; or

14. 11. The revocation, suspension or restriction of a license to practice dentistry or dental hygiene in another state, possession or territory of the United States or foreign country; or

15. 12. The violation of any provision of a state or federal law or regulation relating to the manufacture, distribution, manufacturing, distributing dispensing or administration of administering drugs.

B. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee is unable to practice dentistry with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice dentistry or dental hygiene with reasonable skill and safety to patients.

Drafting Note: Monetary penalties are included in § 54.1-2401. Subsection B has been added to this section.

§ 54.1-2707. § 54-189. Accusation against license holder.—An accusation shall be filed with the Board charging any person licensed pursuant to the provisions of Article 3 (§ 54-168 et seq.) of this chapter with the commission of any of the offenses enumerated in § 54-187. Such accusation this chapter shall be in writing and signed by the accuser or accusers.

Drafting Note: No change in the law.

§ 54.1-2708. § 54-189.1. Proceedings pursuant to § 54-187 .— A. The provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall govern proceedings pursuant to § 54-187.

~~B. A. Except in the case of a monetary penalty, the Board may take *disciplinary* action pursuant to § 54-187 notwithstanding any action pending before or consummated before any court and notwithstanding or any criminal penalty which has been or may be imposed.~~

~~C. B. The Board may suspend a license pending a hearing when the danger to the public health or safety warrants such action.~~

Drafting Note: No change in the law. The general provisions for the title require adherence to the APA.

~~§ 54-177. Board to record license holders. The Board shall keep records in which shall be registered the name and qualifications of every person to whom a license issued pursuant to this article is granted.~~

Drafting Note: This power is included in § 54.1-2505.

~~§ 54-178. Transcript from records as evidence. Transcriptions from the records provided for in § 54-177, shall be certified by the officer who has them in keeping, with the seal of the Board affixed, and shall be evidence in any court of this State.~~

Drafting Note: This provision is incorporated in § 54.1-112.

Article 2.

Licensure of Dentists.

~~§ 54.1-2709. License; application; qualifications; examinations. --~~

~~§ 54-168. Necessity for license. No person shall practice dentistry within the meaning of this chapter unless he possesses a current valid license from the Board of Dentistry to do so .~~

~~§ 54-169. Application and fee. An application for such license shall be made to the Board in writing , and shall be accompanied by such fee as shall be prescribed by rule and regulation of the Board.~~

~~§ 54-170. Qualifications of applicant. The applicant for a license from the Board to practice dentistry must be of good moral character, and eighteen years of age, or over, at the time of making the application. The application shall be accompanied by satisfactory proof that the applicant is a graduate of ; and has a diploma from, the faculty of a professionally accredited and reputable dental school or college, or dental department of a university or college.~~

~~Persons who have practiced dentistry in some other another country may submit an application to practice dentistry in Virginia if they have been engaged in the actual legal and ethical practice of practiced dentistry in that the other country for five consecutive years prior to application and if the application is accompanied by satisfactory proof that the applicant is a graduate of ; and has a diploma from, the faculty of a professionally accredited and reputable an approved dental school or college, or dental department of a university or college. The Board shall have full powers to determine what constitutes a professionally accredited and reputable an approved dental school, college, or dental department of a university.~~

~~§ 54-175. Issuance of license to practice. The Board shall grant a license to practice dentistry to all eligible applicants who undergo a satisfactory whose performance on the examination and is satisfactory, as determined by the Board receive at least four affirmative votes by the members of the Virginia Board of Dentistry or a majority of votes if the applicants are examined by a testing agency or state with whom the Virginia Board of Dentistry has entered into a testing agreement. This license shall be signed by the members of the Board and be stamped with a suitable seal which they may adopt .~~

~~§ 54-171. Nature of examinations; notice to applicant. Examinations shall be of such character as to test the qualifications of the applicant to practice dentistry. The Board shall, Within thirty days from the beginning of the examination, notify each applicant of the action of the Board on his examination shall be notified of his performance .~~

Drafting Note: No change in the law.

~~§ 54.1-2710. § 54-172. Practicing dentistry as assistant or employee, etc., without license.--It shall be unlawful for any person to engage in the practice of dentistry or any branch thereof, as either assistant or employee, or to receive a license from any commissioner of the revenue to practice dentistry or any branch thereof , unless he shall have has passed the examination provided for by this chapter, and receive obtained a license as herein provided for . Nor shall~~

such person receive any compensation for service rendered by him. Nothing contained in this section shall prevent an office assistant from performing the usual secretarial duties or from performing such other assistance as is provided for in § 54-147, and nothing contained in this section shall prevent a dental hygienist from performing such assistance as provided for in § 54-200.2.

Drafting Note: No change in the law.

§ 54-173. Reciprocity with other states. The Board may, at its discretion, arrange for reciprocity with the authorities of other states and territories having requirements comparable to those established by this chapter. If the candidate who desires to procure a license from the Board to practice dentistry in this State has been engaged in the actual and ethical practice of dentistry in such other states and territories just prior to his application, a probationary license to practice dentistry for a period of one year may be granted applicants to practice under such reciprocity on payment to the secretary of the Board of such fee as shall be prescribed by rule and regulation of the Board. The Board may grant a regular license to practice dentistry at the expiration of such one-year period upon payment to the secretary of the Board of such fee as shall be prescribed by rule and regulation of the Board.

Drafting Note: Authority to arrange reciprocity is now in § 54.1-103 for all boards. No change in the law.

§ 54.1-2711. § 54-146. What constitutes Practice of dentistry.—Any person shall be deemed to be practicing dentistry ; who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way ; represents him as engaged in the practice of dentistry ; or any branch thereof ; or who (ii) holds himself out, advertises or permits to be advertised by sign, card, circular, handbill, newspaper or otherwise that he can or will attempt to perform dental operations of any kind; or who (iii) shall diagnose, profess to diagnose, or treat or profess to diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents or contiguous structures, or (iv) shall extract extracts teeth, or shall correct corrects malpositions of the teeth or jaws, or shall take takes impressions for the fabrication of appliances or dental prosthesis , or shall supply or repair supplies or repairs artificial teeth as substitutes for natural teeth, or shall place places in the mouth and adjust adjusts such substitutes ; or do any practice included in the curricula of recognized dental colleges, or administer or prescribe such remedies, medicinal or otherwise, as shall be needed in the treatment of dental or oral diseases, or shall use an X-ray or administer local or general anesthetic agents for dental treatment or dental diagnostic purposes .

And any person shall be deemed to be practicing dentistry who is a manager, proprietor, operator, or conductor of a place for performing dental operations of any kind, or who for a fee, salary, or other reward paid or to be paid either to himself or to another person, performs or advertises to perform dental operations of any kind, diagnoses or treats diseases or lesions of human teeth or jaws, mechanically, medicinally, or by means of radiograms, or attempts to correct malpositions thereof.

No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

Drafting Note: There is no substantive change in law in the first paragraph. The second paragraph was struck as it appears to prohibit a dentist from leasing an office or hiring an office manager. The new language relating to supervision restates the intent of the struck second paragraph.

§ 54.1-2712. § 54-147. What does not constitute practice *Permissible practices* .—The following activities shall not constitute the practice of dentistry *be permissible* :

(1) 1. Dental assistants or dental hygienists aiding or assisting licensed dentists as herein provided; or as provided by the rules and regulations of the Virginia Board of Dentistry ;

(2) 2. The performance of mechanical work on inanimate objects only, for licensed dentists, by any person employed in or operating a dental laboratory in accordance with the provisions of § 54-147.2 ;

(3) 3. Dental students (i) enrolled in D.D.S. or D.M.D. degree programs performing dental operations, under the supervision of competent instructors within a dental school or college, dental department of a university or college, or other dental facility managed by said a university or college recognized by the Virginia Board of Dentistry ; or ; (ii) practicing in recognized governmental clinics or educational institutions under the direct tutorial supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled ; or (iii) practicing dental hygiene in a private dental office under the direct tutorial supervision of a licensed dentist holding appointment on the dental faculty of the school in

which the student is enrolled;

~~(4)~~ 4. A licensed dentist from another state or country appearing as a clinician for demonstrating ~~certain methods of~~ technical procedures before a dental society or organization, convention, or dental college, or performing his duties in connection with a specific case on which he may have been called to this Commonwealth;

~~(5)~~ 5. Graduates of dental schools or colleges or the dental departments of colleges or universities approved by the ~~Virginia~~ Board of Dentistry, who have D.D.S. or D.M.D. degrees and are otherwise qualified, serving as dental interns, residents or post-doctoral degree candidates in hospitals or schools of dentistry operated or licensed by the Commonwealth which maintain dental intern, residency or post-doctoral programs.

Drafting Note: No change in the law.

§ 54.1-2713. ~~§ 54-175.1.~~ Licenses to teach dentistry and dental hygiene ; renewals.— A. Upon payment of ~~such the prescribed fee as shall be prescribed by rule and regulation of the Board~~ , the Board shall grant, without examination, a license to teach dentistry or any branches thereof to any applicant who (i) is a graduate of a dental school or college or the dental department of a college or university approved by the Virginia Board of Dentistry ; ~~who~~ ; (ii) has a D.D.S. or D.M.D. degree and is otherwise qualified ; ~~and who~~ ; (iii) is not licensed to practice dentistry in this State, ~~and who Commonwealth~~; (iv) has not failed an examination for a license to practice dentistry in this State *Virginia* ; and (v) has a license to practice dentistry in at least one other state ; ~~such~~ . The applicant shall also be certified to be on the faculty of an approved institution that teaches dentistry or any branches thereof . The holder of such a license shall be entitled to perform all operations which a person licensed to practice dentistry would be entitled to perform but only for the express purpose of teaching ; ~~such~~ . This license does not entitle the holder to practice dentistry intramurally or privately or to receive fees for service.

B. Upon payment of such fee as shall be prescribed by rule and regulation of the Board, the Board shall grant, without examination, a license to teach dental hygiene or any branches thereof to any applicant who is a graduate of a dental hygiene school or college or the dental hygiene department of a college or university approved by the Virginia Board of Dentistry, who has a B.S., A.B., or M.S. degree and is otherwise qualified, and who is not licensed to practice dental hygiene in this State, and who has not failed an examination for a license to practice dental hygiene in this State, and has a license to practice dental hygiene in at least one other state; such applicant shall also be certified to be on the faculty of an approved institution that teaches dental hygiene or any branches thereof. The holder of such a license shall be entitled to perform all operations which a person licensed to practice dental hygiene would be entitled to perform but only for the express purpose of teaching; such license does not entitle the holder to practice dental hygiene.

C. Any license issued under the provisions of this chapter section shall expire on the second June 30 after its issuance but may be renewed upon payment of such fee as shall be prescribed by rule and regulation of the Board .

Drafting Note: No change in the law. Subsection B of § 54.1-175.1 appears as § 54.1-2725.

§ 54.1-2714. ~~§ 54-175.2.~~ Restricted licenses to teach dentistry for foreign dentists.—A. The Board may grant, without examination, a restricted license to teach dentistry or any branch or branches thereof at a dental school in this State *Commonwealth* to any person who:

1. Is a resident of a foreign country;
2. Is licensed to practice dentistry in ~~such~~ a foreign country;
3. Holds a faculty appointment in a dental school in ~~such~~ a foreign country;
4. Is a graduate of a foreign dental school or college or the dental department of a foreign college or university;
5. Is not licensed to practice dentistry in this State *Virginia* ;
6. Has not failed an examination for a license to practice dentistry in this State *Commonwealth* ;
7. Has received a temporary appointment to the faculty of a dental school in this State *Commonwealth* to teach dentistry or any branch or branches of dentistry ;
8. Is , in the opinion of the Board, qualified to teach dentistry or ~~such branch or branches~~

of dentistry ; and

9. Submits a completed application, ~~such~~ *the* supporting documents as the Board deems necessary to determine ~~such person's~~ *his* qualifications, and ~~such reasonable~~ *the prescribed* fee as the Board may, by regulation, prescribe .

B. ~~Such~~ A restricted license shall entitle the licensee to perform all operations which a person licensed to practice dentistry may perform but only for the purpose of teaching. No person granted a restricted license shall practice dentistry intramurally or privately or receive fees for ~~practicing~~ *dentistry his services* .

C. A restricted license granted pursuant to this section shall expire twelve months from the date of issuance and may not be renewed or reissued.

Drafting Note: No change in the law.

~~§ 54.1-2715. § 54-152. Temporary permits for certain clinicians and hygienists . - (1) Nothing in this chapter shall prevent the issuance of~~ *The Board may issue a temporary permit to a graduate of a dental school or college or the dental department of a college or university approved by the Virginia Board of Dentistry , who has a D.D.S. or D.M.D. degree and is otherwise qualified, and who is not licensed to practice dentistry in Virginia and who has not failed an examination for a license to practice dentistry in this Commonwealth :* ~~(a) To to serve as a clinician under the Director of the Division of Dental Health for in the State Virginia Department of Health or as a clinician the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services in a dental clinic established by a law and operated by the Commonwealth or by a board of directors under a department of the State Health Department or in a state mental institution .~~

Applicants for ~~such~~ *temporary* permits shall be certified to the secretary of the Board by the State Health Commissioner and the Director of the Division of Dental Health of the Commonwealth of Health or by the Commissioner of the Department of Mental Health , and Mental Retardation ; ~~whichever is applicable and Substance Abuse Services~~ . The holder of such a *temporary* permit shall not be entitled to receive any fee or other compensation other than ~~such~~ salary as may be paid to him as an employee of the State Department of Health or of a ~~legally operated dental clinic~~ . Such permits shall be *valid for a period not exceeding no more than* two years and shall expire on the second June 30 after their issuance, or shall terminate when the holder thereof ceases to be employed by the ~~person certifying him~~ *agency* . Such permits may be reissued after their expiration or may be revoked at any time for cause in the discretion of the Board. ~~Such fee as shall be prescribed by rule and regulation of the Board shall be paid to the Board upon the issuance of such a permit or upon each renewal thereof;~~

~~(b); (c) [Repealed.]~~

~~(2) Nothing in this chapter shall prevent the issuance of a permit to a graduate of a school of dental hygiene approved by the Virginia Board of Dentistry, who is otherwise qualified and who is not licensed to practice dental hygiene in this Commonwealth and who has not failed an examination for a license to practice dental hygiene in this Commonwealth:~~

~~(a) [Repealed.]~~

~~(b) To serve as a dental hygienist in a state mental institution in this Commonwealth. Applicants for such permits shall be certified to the secretary of the Board by the State Commissioner of the Department of Mental Health and Mental Retardation. The permits shall authorize the holder thereof to serve for a period of not more than two years as a dental hygienist in a state mental institution. The holder of such permit shall function under the direct supervision of a dentist in the state mental institution and shall be entitled to perform all operations which a person licensed to practice dental hygiene in this Commonwealth would be entitled to perform, but only within the facilities of the mental institution. The holder of such permit shall not be entitled to receive any fee or other compensation other than such salary as may be paid by such hospital. The permits may be reissued after their expiration or may be revoked at any time for cause in the discretion of the Board. The fee, as prescribed by rule and regulation of the Board, shall be paid to the Board upon the issuance of such permit or upon each renewal thereof;~~

~~(c) To serve as a dental hygienist in a public health dental clinic of the State Health Department of this Commonwealth. Applicants for such permits shall be certified to the secretary of the Board by the Director of the Dental Division of the State Health Department. The permits shall authorize the holder thereof to serve for a period of not more than two years as a dental hygienist in a public health dental clinic of the State Health Department. The holder~~

of such permit shall function under the direct supervision of the public health dentist in the clinic and shall be entitled to perform all operations which a person licensed to practice dental hygiene in this Commonwealth would be entitled to perform, but only within the public health dental clinic. The holder of such permit shall not be entitled to receive any fee or other compensation other than such salary as may be paid by the State Health Department. Such permits may be reissued after their expiration or may be revoked at any time for cause in the discretion of the Board. The fee, as prescribed by rule and regulation of the Board, shall be paid to the Board upon the issuance of such a permit or upon each renewal thereof.

Drafting Note: No change in the law. Parts of § 54-152 referring to dental hygienists have been included in new § 54.1-2726.

§ 54.1-2716. ~~§ 54-147.1.~~ Practicing in a ~~connection with~~ commercial or mercantile establishment.—It shall be unlawful for any dentist to practice his profession as a lessee of any in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a ~~duly registered licensed~~ practitioner and is practicing or will practice dentistry as a lessee of any in such commercial or mercantile establishment. ~~But nothing herein~~ This section shall be construed to not prohibit or prevent the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who ~~shall violate~~ violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor and punished accordingly .

For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

Drafting Note: No change in law is intended; however, a definition of "commercial or mercantile establishment" is provided to clarify this provision.

§ 54.1-2717. ~~§ 54-183.~~ Corporations may not ~~Corporate~~ practice of dentistry ; ~~exception~~ .—No corporation shall be formed ; and no or foreign corporation shall be domesticated in the State Commonwealth , for the purpose of practicing or offering or undertaking to practice dentistry ; and no other than a professional corporation as permitted by Chapter 7 of Title 13.1. charter shall be granted for such purposes or any of them ; and no foreign corporation shall be permitted to file its charter in this State, so as to empower it to do business, if any of such powers are included therein. No charter granted in this State shall authorize or empower any person to practice dentistry as proprietor, officer, agent or employee of a corporation except as herein provided or authorize the employment for hire or other remuneration or gain, of any person for the purpose of practicing dentistry. But nothing in this section shall be construed to prevent the continued use of the name of any corporation heretofore legally chartered under the laws of this State, and at present engaged in the proper conduct of its business from continuing its business in accordance with the provisions of §§ 1652 and 1653 of the Code of 1910 as they existed on June 16, 1930.

Drafting Note: No change in the law.

§ 54.1-2718. ~~§ 54-184.~~ Practicing under firm or trade or assumed name.—No person shall practice or continue to practice dentistry , or offer or undertake to practice, or hold himself out or continue to hold himself out as practicing dentistry, under any a firm name or trade name or under any other name than his own true name; provided, that nothing herein contained . This section shall not prohibit the practice of dentistry by a partnership under a firm name containing nothing but only the name names of every member of such the partnership . Nothing herein contained shall or prohibit a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name, containing only the names of each member of such firm ; or as the employee of a professional association organized and existing under the Professional Association Act (Chapter 25 (§ 54-873 et seq.); Title 54, Code of Virginia) or as the employee of a professional corporation organized and existing under the Professional Corporation Act (§ 13.1-542 et seq.); provided, however, that the . The name of any such professional association or professional corporation shall contain the true name or last name of each associate or shareholder member and any other words designating its legal status as may be required by law, but no other words other than the initials D.D.S. or D.M.D. following the true name or last name of each associate or shareholder member so qualified.

Drafting Note: This section has been modernized.

§ 54-185. Penalty for violation of two preceding sections. Every person or corporation violating any of the foregoing provisions of this article shall be subject to a fine of \$300 for the first offense and \$600 for the second and each and every subsequent offense.

Drafting Note: There is no change in the law. The monetary penalties are provided in §

§ 54.1-2719. § 54-147.2. Persons engaged in constructing or repairing prosthetic dentures, bridges and other dental construction and repair of appliances.— (1) A. Licensed dentists may employ or engage the services of any person, firm or corporation to construct ; reproduce, or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation ; so employed or engaged ; when constructing, reproducing, or repairing such dentures, bridges, replacements, or orthodontic appliances, exclusively, directly and solely for licensed members of the dental profession, and not for the public or any part thereof, shall not be deemed or considered to be practicing dentistry as defined in this chapter . Nothing herein shall be construed to permit any No such person, firm or corporation to shall perform any direct personal dental service for a patient ; , but such person, firm or corporation they may assist a dentist in the selection of shades for the matching of prosthetic devises [devices] when such the dentist sends the patient to any person, firm or corporation them ; with a written work order form as directed in § 54-147.2 (2) .

It shall be unlawful for persons, firms or corporations so employed or engaged, to advertise in any manner the appliances constructed ; reproduced, or repaired, or the services rendered in the construction, repair, reproduction, or alteration thereof, except, that persons, firms or corporations so employed may announce in trade journals and professional publications which circulate among members of the dental profession, their names, the locations or places of their business, their office hours, telephone numbers, and the fact that they are engaged in the construction, reproduction or repair of such appliances, together with such display advertisements as disclose the character and application of their work, and persons, firms or corporations so employed or engaged may furnish to licensed dentists information regarding their products, materials, uses and prices therefor. Announcement may also be made by business card, in business and telephone directories, but announcements made by business card or in business and telephone directories shall not contain any amount as a price or fee for the services rendered, or to be rendered, or for any material or materials used or to be used, or any picture or other reproduction of a human head, mouth, denture or specimen of dental work or any other media calling attention of the public to their business. Announcements in business and telephone directories shall be limited to name and address and telephone number and shall not occupy more than the number of lines necessary to disclose such information.

(2) B. Any licensed dentist who employs the services of any person, firm or corporation not working in a dental office under the his direct supervision of and solely for the licensed dentist who maintains the office, to construct ; reproduce, or repair, extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Board which shall , at minimum, contain: (a) (i) the name and address of the person, firm or corporation to which the work order is directed ; (b) (ii) the patient's name or initials or an identification number; (c) (iii) the date on which the work order was written; (d) (iv) a description of the work to be done, including diagrams , if necessary; (e) a (v) specification of the type and quality of materials to be used; (f) and (vi) the signature and address of the dentist ; and (g) any other information required by the Board .

(3) The person, firm or corporation receiving a work order from a licensed dentist shall retain the original work order and the dentist shall retain a duplicate copy thereof for inspection at any reasonable time by the Board or its duly authorized agents, for a period of three years in both cases .

(4) C. If the person, firm or corporation receiving a written work order from a licensed dentist engages another person, firm or corporation (hereinafter referred to as a " subcontractor ") to perform some of the services relative to such the work order, he or it shall furnish a written subwork order with respect thereto shall be furnished on forms prescribed by the Board which shall , at minimum, contain: (a) (i) the name and address of the subcontractor; (b) (ii) a number identifying the subwork order with the original work order ; which number shall be endorsed on the work order received from the licensed dentist ; (c) (iii) the date on which the subwork order was written; (d) (iv) a description of the work to be done by the subcontractor ; including diagrams , if necessary; (e) (v) a specification of the type and quality of materials to be used; and (f) (vi) the signature of the person ; firm or corporation issuing the subwork order ; and (g) any other information required by the Board .

The subcontractor shall retain the subwork order and the issuer thereof shall retain a duplicate copy, attached to the work order received from the licensed dentist ; for inspection by the Board or its duly authorized agents, for a period of three years in both cases .

D. No person, firm or corporation engaged in the construction or repair of appliances shall

refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

(5) Any licensed dentist who: (a) Employs or engages the services of any person, firm or corporation to construct, reproduce, or repair, extraorally, prosthetic dentures, bridges, or other dental appliances without first providing such person, firm or corporation with a written work order; or (b) fails to retain a duplicate copy of the work order for three years; or (c) refuses to allow the Board or its duly authorized agents, to inspect his files of work orders shall be deemed guilty of a misdemeanor and the Board may revoke or suspend his license in accordance with the provisions of this chapter.

(6) Any person, firm or corporation, who: (a) Furnishes such services to any licensed dentist without first obtaining a written work order therefor from such dentist; or (b) acting as a subcontractor as described in (4) above, furnishes such services to any person, firm or corporation, without first obtaining a written subwork order from such person, firm or corporation; or (c) fails to retain the original work order or subwork order, as the case may be, for three years; or (d) refuses to allow the Board or its duly authorized agents, to inspect his or its files of work orders or subwork orders, shall be deemed guilty of a misdemeanor.

(7) None of the The provisions of this section shall *not* apply to a work order for the construction, reproduction, or repair, extraorally, of prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, done by a person, firm or corporation pursuant to a written work order received from a licensed dentist who is a resident of *residing* and practicing in another state or in the District of Columbia unless there shall be in effect in said state or District of Columbia a law substantially the same as the provisions of this section .

Drafting Note: This section has been substantially revised. The penalty provisions are included in § 54.1-111.

§ 54-180. License obtained through fraud. Any license issued pursuant to this article, obtained through fraud of any nature, or by any false or fraudulent representation of practice shall be void, and the person found guilty of such fraud shall not have the right to practice dentistry, or any branch thereof, in this State.

Drafting Note: The provisions of the section are included in § 54.1-111.

§ 54-181.1. Renewal of license. Every license to practice dentistry granted under the provisions of this chapter shall expire and be required to be renewed at such time, in such manner and upon payment of such fees as the Board may prescribe by regulation.

Drafting Note: The authority to renew licenses is included in § 54.1-2400.

§ 54-195. Practice of dentistry without license. A. Any person practicing dentistry or any of the branches thereof, in this State, without having passed the examinations and possessing a current valid license as provided in this chapter, shall be guilty of a Class 1 misdemeanor. Each day of such practice shall constitute a separate offense.

B. Any appliances, equipment, drugs and other materials used by such person in his practice may be seized by the Board and shall be subject to forfeiture upon conviction of a violation of this section.

Drafting Note: Practice of any licensed profession without a license is still a Class 1 misdemeanor (See § 54.1-111).

§ 54-196. Failure to furnish names of employees. Every person practicing dentistry, or any branch thereof, within this State upon demand in writing, made by the Board shall furnish within thirty days after the demand to the Board the name and address of each and every person practicing dentistry or assisting in any way in the practice thereof, in the office of such person. For failure to do so, such person shall be liable to a fine of twenty-five dollars.

Drafting Note: This section was deleted because it was unnecessary.

§ 54.1-270. § 54-186. Display of name of practitioner.—Every person practicing dentistry under an authorized firm name ; as authorized in § 54-184 , and every person practicing dentistry as an employee of another licensed dentist shall cause his name to be conspicuously displayed, and kept so displayed, in a conspicuous place, *display his name* at the entrance of the place where such practice shall be conducted, *office*. and Any person who *fails* shall neglect to cause *display* his name to be displayed, as herein required, shall be subject to a fine of \$100 for each and every offense to *disciplinary action by the Board* .

Drafting Note: No change in the law. Monetary penalties are provided in § 54.1-2401.

§ 54.1-2721. § 54-197. Failure to display current *Display of* license.—Every person practicing dentistry in this State *Commonwealth* shall ; at all times, conspicuously display his license ; in a

conspicuous place ; in his office ; where the same shall be in plain view of patients. Every Any person who shall practice practicing dentistry ; within the meaning of this chapter, without having such his license on display ; as herein required, shall be liable to a fine of fifty dollars subject to disciplinary action by the Board .

Drafting Note: No change in the law. Monetary penalties are provided in § 54-2401.

§ 54-198. Employing or assisting unlicensed person to perform dental operation.—No person shall employ or give aid to, or assist any person not regularly licensed to practice dentistry to perform any dental operation upon human beings in this State. Any person who shall violate any of the provisions of this section shall be subject to a fine of \$300 for the first offense, and each subsequent offense.

Drafting Note: This provision is included in § 54.1-2706. (See Subdivision 10).

§ 54-200. Commonwealth's attorneys to prosecute violations.—It shall be the duty of the Commonwealth's attorneys to prosecute every violation of this chapter.

Drafting Note: This section does not appear necessary.

§ 54-199. Other offenses.—Any person, company or association shall be guilty of a misdemeanor, and upon conviction thereof shall be punished with a fine of not less than \$500 or confined for not less than six months or by both fine and confinement in the discretion of the court, who: or document, conferring or purporting to confer any dental degree or license, or transcript made or purporting to be made, pursuant to the laws regulating the license and registration of dentists; or

(2) Shall with fraudulent intent, alter in material regard any diploma, license, or transcript; or

(3) Shall use or attempt to use any such diploma, license, or transcript which has been purchased, fraudulently issued, counterfeited or materially altered, either as a license or color of license to practice dentistry, or in order to procure registration as a dentist; or

(4) Shall practice dentistry under a false or assumed name; or

(5) Shall make willfully a false statement in a material regard in any affidavit or examination, required of an applicant for examination, license or registration under the law regulating the practice of dentistry.

Drafting Note: Sections 54.1-102 and 54.1-111 appear to include these provisions.

§ 54-200.01. Jurisdiction to enjoin unlawful practice of dentistry or dental hygiene. The courts of record of this Commonwealth having general equity jurisdiction are hereby vested with jurisdiction and power to enjoin the unlawful practice of dentistry or dental hygiene in a proceeding brought by the Virginia Board of Dentistry or any member thereof, or by any citizen of this State, in the county or city in which the alleged unlawful practice occurred or in which the defendant resides.

Drafting Note: This concept is included in subdivision B of § 54.1-111.

§ 54-200.02. Injunction proceedings. If upon hearing it is shown that the defendant has been unlawfully practicing dentistry or dental hygiene the court shall enjoin such unlawful practice by either temporary or permanent injunction. The practice and procedure in such cases shall be, as near as may be, as in any other injunction proceeding.

The remedy by injunction herein given is in addition to the powers granted the Board to revoke or suspend the license of any licensed dentist in accordance with §§ 54-187 to 54-191, and in addition to the criminal prosecution provided for in §§ 54-195 to 54-200.

Drafting Note: This concept is also included in subdivision B of § 54.1-111.

Article 3.

Licensure of Dental Hygienists.

§ 54.1-2722. § 54-200.7. License ; application; qualifications; practice of dental hygiene .—No person shall practice dental hygiene within the meaning of this chapter unless licensed to do so he possesses a valid license from the Board of Dentistry . The holder of a license for the two-year period in which the same is issued, or of a current registration certificate licensee shall have the right to practice dental hygiene in this Commonwealth for the period of his license as set by the Board , under the direction of any duly licensed and registered dentist of this Commonwealth .

§ 54-200.8. Application and fee.— An application for such license shall be made to the Board in writing, and shall be accompanied by such fee as shall be prescribed by rule and regulation of the Board. *satisfactory proof that the applicant*

§ 54-200.9. Qualifications of applicant. The applicant for a license from the Board to practice dental hygiene must be a person of good moral character, eighteen years of age or over at the time of making the application, who has successfully completed a course of training in a school of dental hygiene approved by the Board.

§ 54-200.2. Practice of dental hygiene. The function of the dental hygienist is to assist the members of the dental profession in providing oral health care and oral health education to the public. A licensed dental hygienist who has been duly licensed and registered in this State may, under the direction of a duly licensed and registered dentist of this State and subject to such rules as may be adopted by the regulations of the Board, perform services which are educational, diagnostic, therapeutic, or preventive in nature and are authorized by the Board. *Such* These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient.

§ 54-200.11. Issuance of license to practice.— The Board shall grant a license to practice dental hygiene to all qualified eligible applicants who undergo a satisfactory whose performance on the examination is satisfactory as determined by the Board and receive at least four affirmative votes by the members of the Board or a majority of votes if the applicants are examined by a testing agency or state with whom the Board has entered into a testing agreement. The license shall be signed by the members of the Board and be stamped with a suitable seal which the Board may adopt .

§ 54-200.4. Powers and duties of Board. The Board shall have authority, in the administration of this chapter, to fix the time of examinations for the granting of licenses to dental hygienists; the form of application to be filed; the type of examination to be given; and to make such rules and regulations as may be necessary and reasonable to carry out the provisions of this chapter.

Examinations shall test the qualifications of the applicant to practice dental hygiene. Within thirty days of the examination, each applicant shall be notified of his performance.

Drafting Note: No change in the law.

§ 54-200.5. Reciprocity with other states. The Board may, at its discretion, arrange for reciprocity with the authorities of other states and territories having requirements comparable to those established by this chapter. If the candidate who desires to procure a license from the Board to practice dental hygiene in this State has been engaged in the actual and ethical practice of dental hygiene in such other states and territories just prior to his application, a probationary license to practice dental hygiene for a period of one year may be granted by the Board under such reciprocity on payment to the secretary of the Board of such fee as shall be prescribed by rule and regulation of the Board. The Board may grant a regular license to practice dental hygiene at the expiration of such one-year period upon payment to the secretary of the Board of such fee as shall be prescribed by rule and regulation of the Board.

Drafting Note: See § 54.1-103 for reciprocity authority.

§ 54-200.3. Administration.—The Board is hereby vested with the authority and is charged with the duty of administering the provisions of this chapter.

Drafting Note: This section is not necessary because this authority is already included in § 54.1-2400 and Article 1 of this chapter.

§ 54.1-2723. § 54-200.20. Practice of dental hygiene without a license.— Any person practicing It shall be unlawful to practice dental hygiene in this State without having passed the examinations and received obtained the license as provided in this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 for the first offense, and for the second offense not less than \$500, or be confined in jail for from 3 to 12 months, or both, in the discretion of the court .

§ 54.1-2724. § 54-200.6. Limitations on the employment of dental hygienists.—The Board shall determine by regulation how many dental hygienists can may work at one and the same time for a dentist ; provided that the Board's decision in this regard must have uniform application throughout the State . In making such determination the Board shall consider the number of hygienists that may be properly supervised by the dentist at any one time. In the absence of such regulation by the Board, no dentist shall utilize the services of more than one hygienist at any one time. Nothing in this chapter shall prevent the The State Board of Health or the boards of health of counties or cities of Virginia from employing may employ the necessary number of hygienists in public school dental clinics, subject to rules and regulations of the Board.

Drafting Note: There is no change in the law.

§ 54.1-2725. Licenses to teach dental hygiene; renewals.—Upon payment of the prescribed fee, the Board shall grant, without examination, a license to teach dental hygiene to any applicant who (i) is a graduate of a dental hygiene school or college or the dental hygiene department of a college or university approved by the Board of Dentistry; (ii) has a B.S., B.A., A.B., or M.S. degree and is otherwise qualified; (iii) is not licensed to practice dental hygiene; (iv) has not failed an examination for a license to practice dental hygiene in this Commonwealth; and (v) has a license to practice dental hygiene in at least one other state. The applicant shall be certified to be on the faculty of an approved institution that teaches dentistry or dental hygiene. The holder of such a license shall be entitled to perform all operations which a person licensed to practice dental hygiene would be entitled to perform but only for the express purpose of teaching. This license does not entitle the holder to practice dental hygiene intramurally or privately or to receive fees for services.

Any license issued under this section shall expire on the second June 30 after its issuance but may be renewed.

Drafting Note: No change in the law. Please note that this language was formerly part of § 54-175.1 (See § 54.1-2513).

§ 54.1-2726. Temporary permits for certain hygienists.—The Board may issue a temporary permit to a graduate of a school of dental hygiene, who is otherwise qualified and is not licensed to practice dental hygiene in Virginia and has not failed an examination for a license to practice dental hygiene in this Commonwealth, to serve in the Department of Health or the Department of Mental Health, Mental Retardation and Substances Abuse Services in a dental clinic operated by the Commonwealth.

Applicants for temporary permits shall be certified to the secretary of the Board by the Commissioner of Health or the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services. The holder of such permit shall not be entitled to receive any fee or compensation other than salary. Such permits shall be valid for no more than two years and shall expire on the second June 30 after their issuance, or shall terminate when the holder ceases to be employed by the certifying agency. Such permits may be reissued after their expiration or may be revoked at any time for cause in the discretion of the Board.

The holder of a temporary permit shall function under the direction of a dentist.

Drafting Note: No change in the law. Please note that this section was formerly part of § 54-152 (See § 54.1-2715).

§ 54-200.10. Investigation of applicant for license.—Upon receipt of an application for such license, the Board shall inquire into the qualifications of the applicant and the accuracy of the statements appearing in the application, and for such purposes shall have power to send for witnesses, papers and documents, and administer oaths. The cost of such inquiry shall be borne by the applicant.

Drafting Note: No change in the law. This provision is incorporated in § 54.1-2506.

§ 54.1-2727. § 54-200.14. Display of license to be displayed.—Every person practicing dental hygiene in this State shall at all times conspicuously display his license in a conspicuous place in his office where the same shall be in plain view of patients.

Drafting Note: No change in the law.

§ 54-200.21. Failure to furnish name of employer or display license.—Every person practicing dental hygiene within this State who shall willfully fail to keep the Board informed of the name and address of his employer or who shall fail to display his license, as provided in this chapter, or who shall practice otherwise than as provided in this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 or more than \$100 for the first offense, and for the second offense not less than \$100 nor more than \$250 for the second offense.

Drafting Note: This section is no longer necessary and has been struck at the request of the Board.

§ 54.1-2728. § 54-200.18. Grounds for revocation or suspension.—The Board may revoke or suspend the license of any dental hygienist for any one or more of the causes for which it may revoke or suspend the license of any licensed dentist set forth in § 54-187 of the Code of Virginia Article 1 (§ 54.1-2700 et seq.) of this chapter, insofar as said causes are applicable to the practice of dental hygiene.

Drafting Note: No change in the law.

§ 54-200.10. Procedure for revocation or suspension. The procedure for revocation or suspension of the license of a dental hygienist shall be the same as that provided in §§ 54-180 to 54-180.2 of the Code of Virginia, both sections inclusive, for the revocation or suspension of the license of a licensed dentist.

Drafting Note: This section is not needed as § 54.1-2707 includes this concept.

§ 54-200.12. Board to record license holders. The Board shall keep records in which shall be registered the name and qualifications of every person to whom such a license is granted. Such records shall show the name and address of each employer of each dental hygienist, and each dental hygienist shall promptly advise the Board of the name and address of his employer and all changes therein.

Drafting Note: This power is included in § 54.1-2505.

§ 54-200.13. Transcript from records as evidence. Transcriptions from the records provided for in § 54-200.12, certified by the officer who has them in keeping, with the seal of the Board affixed, shall be evidence in any court of this State.

Drafting Note: This provision is incorporated in § 54.1-112.

§ 54-200.15. License obtained through fraud. Any license to practice dental hygiene obtained through fraud of any nature, or by any false or fraudulent representation or practice shall be void, and the person found guilty of such fraud shall not have the right to practice dental hygiene in this State.

Drafting Note: The provisions of this section are included in § 54.1-102.

§ 54-200.16:1. Renewal of license. Every license to practice dental hygiene granted under the provisions of this chapter shall expire and be required to be renewed at such time, in such manner and upon payment of such fees as the Board may prescribe by regulation.

Drafting Note: The authority to renew licenses is included in § 54.1-2400.

§ 54-200.22. Commonwealth's attorneys to prosecute violations. It shall be the duty of the Commonwealth's attorneys to prosecute every violation of this chapter committed in their respective jurisdictions.

Drafting Note: This section does not appear necessary.

CHAPTER 28.

FUNERAL SERVICES.

Article 1.

Board of Funeral Directors and Embalmers.

§ 54.1-2800. § 54-260.67. Definitions.—(1) "Board" shall mean the Virginia Board of Funeral Directors and Embalmers or any successor thereof.

(2) "Practice of funeral services" shall mean engagement in the care or disposition of the human dead or in the practice of disinfecting and preparing by embalming or otherwise the human dead for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It shall also mean the engagement of making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(3) "Funeral service licensee" shall mean a person who is duly licensed and engaged in the "practice of funeral service" as above defined.

(4) "Funeral service establishment" means any place, including main establishment, branches or chapels, where any part of the profession or business of funeral directing or any act of embalming, or either or both, is carried on, conducted or performed, or is permitted to be carried on, conducted or performed.

(5) "Funeral directing" means the profession, for profit, of directing funerals or supervising funerals or preparing human dead for burial by means other than embalming.

(6) "Funeral director" means any person engaged in the practice of "funeral directing" as defined above.

(7) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of the human dead by application of chemicals externally or internally or both.

(8) "Embalmer" means any person engaged in the practice of "embalming" as defined above.

(9) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio or television station.

(10) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral service, or a licensed funeral director and a licensed embalmer of and in the State of Virginia under the provisions of this chapter, and who is duly registered as such with the Board.

Nothing in this chapter shall apply to or in any manner interfere with the duties of any officer of local or state institutions, nor shall be construed to apply to the burial of dead bodies of paupers or inmates of state institutions when buried at the expense of the State or of a political subdivision thereof.

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

"Advertisement" means any information disseminated or placed before the public.

"Board" means the Board of Funeral Directors and Embalmers.

"Embalmer" means any person engaged in the practice of embalming.

"Embalming" means the preservation and disinfection of the human dead by external or internal application of chemicals.

"Funeral directing" means the for-profit profession of directing or supervising funerals or preparing human dead for burial by means other than embalming.

"Funeral director" means any person engaged in the practice of funeral directing.

"Funeral service establishment" means any main establishment, branch or chapel where any part of the profession of funeral directing or the act of embalming is performed.

"Funeral service licensee" means a person who is licensed in the practice of funeral services.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Resident trainee" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

Drafting Note: This section has been reworded, but there is no substantive change in the law. The last paragraph of § 54-260.67 has been transferred to new § 54.1-2801.

§ 54.1-2801. Exemptions.—A. The provisions of this chapter shall not apply to any officer of local or state institutions or to the burial of the bodies of inmates of state institutions when buried at the expense of the Commonwealth or any of its political subdivisions.

B. Any person holding a license as a funeral director or embalmer or an equivalent in another state, having substantially similar requirements as the Board, may apply to the Board for courtesy card privileges to remove bodies from and to arrange funerals or embalm bodies in this Commonwealth. However, these privileges shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia.

Drafting Note: This section consists of the substance of the last paragraph of § 54-260.67 and the last paragraph of § 54-260.70. There is no change in the law.

§ 54.1-2802. § 54-260.64. Board of Funeral Directors and Embalmers continued ; appointment;

terms; vacancies; meetings; quorum .—The Virginia Board of Funeral Directors and Embalmers as heretofore established, is hereby continued.

§ 54-260.65. Appointment of members of Board; terms; vacancies. The Board shall consist of nine members ; each of whom shall be a citizen of the United States and a resident of Virginia, and seven of whom have been licensed for the practice of funeral service under this chapter for five consecutive years and who have had five consecutive years' experience as a funeral service licensee or a funeral director and embalmer in this Commonwealth immediately preceding his or her appointment. as follows: seven licensees of the Board with at least five consecutive years of experience in this Commonwealth immediately prior to appointment and two members of the Board shall be public members, not licensed pursuant to the provisions of this chapter, nor subject to regulation by the Board citizen members . Members of the Board The terms of office shall be appointed by the Governor for terms of seven five years from July 1 ; one appointment . Appointments shall be made annually on or before June 30 as the terms of the members respectively expire ; and all vacancies shall be filled by the Governor . Appointments to the Board should be generally reflective of represent the geographical areas of the Commonwealth. Any member of the Board may be removed by the Governor for improper conduct, incompetence or incapacity; the Governor shall be the sole judge of the sufficiency of the cause for removal. No person shall be eligible to succeed himself unless he is serving an unexpired term. The public members appointed to the Board shall be appointed as vacancies occur on or after July 1, 1970. The Board shall annually elect a president, a vice-president and a secretary-treasurer.

§ 54-260.66. Oath of members of Board.—The members of the Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which oath shall be administered by properly qualified authority and certified to the office of the Secretary of the Commonwealth within ten days of such appointment.

§ 54-260.68. Meetings of Board. The Board shall hold at least two meetings in each year at which examinations shall be given to qualified applicants for licenses . In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Four Five members shall constitute a quorum.

Drafting Note: Sections 54-260.64, 54-260.65 and 54-260.68 have been consolidated in new § 54.1-2802. There are minor changes in the law. The limitation of terms is now included in § 54.1-107. Section 54-260.66 is unnecessary as § 49-1 requires oaths of all officers of the Commonwealth. Further, election of officers is transferred from § 54-260.69.

§ 54.1-2803. § 54-260.69. Specific powers and duties of Board ; inspectors; information to be furnished to Board; inspections; notice validly given when mailed; dead bodies for instruction . — The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the funeral service profession in the Commonwealth of Virginia as it may deem expedient and consistent with the laws of this Commonwealth and for the public good.

The Board shall elect from its members a president, a vice-president and a secretary-treasurer, no two offices to be held by the same person. The president and vice-president shall serve for one year, and until their successors shall be elected and qualify, but the secretary-treasurer shall serve at the pleasure of the Board.

The members of the Board shall serve without compensation providing that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board.

All fees received under the provisions of this chapter shall be applied to payment of the necessary expenses of the Board. All moneys received in excess of expenditures of the Board shall be held in a special fund for payment of the expenses of the Board.

The Board may employ an attorney subject to the written approval of the Attorney General.

There shall be appointed by the Board agents whose title shall be "Inspector of the Board of Funeral Directors and Embalmers of the State of Virginia," and no person shall be eligible for appointment to such office unless he or she shall, at said time, be licensed under this chapter in the Commonwealth of Virginia and unless prior to the time of such appointment he has had not less than five consecutive years' experience as such a licensee. All inspectors shall receive such compensation as the Board may determine. Inspectors shall hold office during the pleasure of the Board which shall determine what their duties shall be, and such inspectors are authorized to enter the office, premises, establishment or place of business of any funeral service licensee in the Commonwealth of Virginia or any office, premises, establishment or place where the

practice of funeral service is carried on, or where such practice is advertised as being carried on, for the purpose of inspecting said office, premises, or establishment and for the purpose of inspecting the license and registration of any funeral service licensee and resident trainee operating therein.

Inspectors are further authorized to serve and execute any process issued by any court under the provisions of this chapter and to serve and execute any papers or process issued by the Board or any officer or member thereof, under authority of this chapter, and to also perform any other duty or duties prescribed or ordered by the Board.

Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which he is a licensee or resident trainee, and every funeral service establishment shall be subject to inspection by the Board at all reasonable times and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee and funeral service establishment shall provide the Board with his or its current post-office address, which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this chapter and of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9, to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

The Board is empowered to regulate and inspect, according to law, funeral service establishments, their operation and the licenses under which they are operated, and to enforce as provided by law the rules, regulations and requirements of the Department of Health of the Commonwealth and of the city, town or county wherein any such funeral service establishment is maintained and operated.

The Board may establish, supervise, regulate and control, according to law, programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by law as a qualification for the granting of any license and to establish essential requirements and standards for such approval.

Schools for teaching embalming under the direction of the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this Commonwealth to medical colleges, but such bodies shall be obtained through the State Health Commissioner.

The Board shall, from time to time, make and adopt as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 such rules, regulations and bylaws for its governance and for the carrying out and enforcement of the provisions of this chapter as may be necessary and as are consistent with the laws of this Commonwealth and the United States.

The Board shall adopt a common seal.

The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this chapter or otherwise by law or as may be necessary to carry out the powers herein conferred.

In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties:

- 1. To establish standards of service and practice for the funeral service profession in this Commonwealth.*
- 2. To regulate and inspect funeral service establishments, their operation and licenses.*
- 3. To require licensees and resident trainees to submit all information relevant to their practice or business.*
- 4. To enforce the relevant regulations of the Board of Health.*
- 5. To enforce local ordinances relating to funeral service establishments.*
- 6. To determine the qualifications for inspectors serving as its agents.*

7. To establish, supervise, regulate and control, in accordance with the law, programs for resident trainees.

8. To establish standards for and approve schools of mortuary science or funeral service.

9. To adopt a common seal.

Drafting Note: Language pertaining to general powers and duties of the Board of Funeral Directors and Embalmers has been struck because of the inclusion of a general section applying to all of the health regulatory boards (see § 54.1-2400). The second paragraph has been transferred to § 54.1-2802. Language relating to compensation of the Board, fees and employment of attorneys and inspectors has been struck because other provisions cover these areas.

§ 54.1-2804. § 54-260.70. Licensing authority of persons engaged in funeral service profession .
–The Virginia Board of Funeral Directors and Embalmers is hereby authorized and empowered to determine the qualifications necessary to enable any person to lawfully engage in the funeral service profession the practice of funeral service, funeral directing and to operate the operation of a funeral service establishment. To be licensed for the practice of funeral service under this chapter a person must be at least eighteen years of age and shall not have been convicted of a felony. The applicant shall be a graduate of a high school or the equivalent thereof, shall have completed two years as a resident trainee and graduated from a school of mortuary science or funeral service approved by the Board and passed the required examination provided for in this chapter. The Board, in its discretion, may license an individual convicted of a felony if he has been pardoned or has had his civil rights restored.

Each such applicant for the license for the practice of funeral service shall be examined orally or in writing on the following subjects:

(a) Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health.

(b) Funeral service arts and sciences including embalming and restorative art.

(c) Funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.

The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

Any person holding a valid license as a funeral director or embalmer or its equivalent in another state, territory, or the District of Columbia, having substantially similar requirements to those existing in this Commonwealth, may apply for courtesy card privileges to the Board, which in its discretion, may grant, permitting such nonresident funeral director or embalmer to remove bodies from and to arrange funerals or embalm bodies in this Commonwealth, but such privileges shall not include the right to establish a place of business in, nor engage generally in the business of funeral directing and embalming in this Commonwealth.

Drafting Note: The struck language has been transferred to other sections (see §§ 54.1-2801, 54.1-2813 and 54.1-2814).

§ 54.1-2805. § 54-260.73:1. Engaging in the funeral service profession or acting as a funeral director or embalmer without a license.–It shall be unlawful for any person to engage in or hold himself out as engaging in the funeral service profession or , to operate a funeral service establishment, or to act as a funeral director or embalmer or hold himself out as such unless he is duly licensed by the Board.

Drafting Note: No change in the law.

§ 54.1-2806. § 54-260.74. Refusal, suspension or revocation of license ; offenses .– Whenever the Board has 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 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 the Administrative Process Act (§ 9-6.14:1 et seq.).

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 refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or

reprimand any licensee or place him on probation for such time as it may designate for any of the following causes :

- (1) 1. Conviction of a any felony or a any crime involving moral turpitude.
- (2) 2. Unprofessional conduct which is hereby defined to include - likely to defraud or to deceive the public or clients;
- (a) 3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
- (b) 4. False or misleading advertising as the holder of a license for practice of funeral service ;
- (e) 5. Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending; however, this shall not be deemed to prohibit general advertising general advertising shall be allowed ;
- (d) 6. 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) 7. 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) 8. 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; 9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice funeral service;
- (h) 10. Aiding or abetting an unlicensed person to practice within the funeral service profession;
- (i) 11. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
- (j) 12. 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) 13. Violation of any state law statute or municipal or county , ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- (m) 14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof ;
- (n) 15. Knowingly making any false statement on a certificate of death;
- (o) 16. Violation of any provisions of Chapter 5 (§ 11-24 et seq.) of Title 11 and Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 of the Code of Virginia or rules and regulations which the Board may adopt ;
- (p) 17. Failure to comply with § 54-260.71-1 § 54.1-2812 , and to keep on file an itemized statement of funeral expenses in accordance with rules and Board regulations which the Board may adopt ;
- (q) 18. Knowingly dispose disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that body parts may be disposed of in a manner different from that used to dispose of the body;

(*) 19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices ; ; and

20. *Violating or cooperating with others to violate any provision of this chapter or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health.*

No person licensed for the practice of funeral service shall remove or embalm a dead human body when he or she has information indicating a case of death described in subsection A of § 32.1-283 nor shall a dead human body whose death occurred in Virginia be cremated or buried at sea until permission of the medical examiner has first been obtained as provided in § 32.1-284.

The provisions of Article 4 (§ 32.1-305 et seq.) of Chapter 8 of Title 32.1 shall apply to any funeral service licensee or establishment that engages in the cremation of dead human bodies.

No funeral service establishment shall accept a dead human body from any public officer, excluding the 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 is 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; however, this section shall not prevent any funeral service establishment from charging and being reimbursed for services 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.

Drafting Note: This section has been reworded and the last six paragraphs have been transferred to § 54.1-2807. New section 54.1-109 requires adherence to the Administrative Process Act by all boards. Section 54.1-110 also relates to hearings. Therefore, these provisions are unnecessary here.

§ 54.1-2807. *Other prohibited activities.*—A. A person licensed for the practice of funeral service shall not (i) remove or embalm a body when he has information indicating the death was such that a medical examiner's investigation is required pursuant to § 32.1-283 or (ii) cremate or bury at sea a body until he has obtained permission of the medical examiner as required by § 32.1-284.

B. *Funeral service establishments shall not accept a dead human body from any public officer except a medical examiner, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal of the body.*

Any funeral service establishment violating this subsection shall not charge for any service delivered without the directions of the next of kin. However, in cases of accidental or violent death, the funeral service establishment may charge and be reimbursed for the removal of bodies and rendering necessary professional services until the next of kin or the persons liable for the funeral expenses have been notified.

C. No company, corporation or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could give rise to an obligation to care for the remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

D. No person licensed for the practice of funeral service or any of his agents shall have any part in any transaction which in any way interferes with the freedom of choice of the general public in the choice of persons or establishments for the care of human remains.

E. This section shall not be construed to apply to the authority of any administrator, executor, trustee or other person having a fiduciary relationship with the decedent.

Drafting Note: The last paragraphs in § 54-260.74 (new § 54.1-2806) except the sentence on cremation have been reworded and placed in this section.

§ 54.1-2808. Cremation.—Any person or establishment licensed by the Board which engages in the cremation of dead human bodies shall comply with the provisions of Article 4 of Chapter 8 of Title 32.1 (§ 32.1-305 et seq.).

Drafting Note: This cremation provision is transferred from § 54-260.74 (new § 54.1-2807).

§ 54-260.70:3. Persons licensed in other states, etc. The Board may grant a license to practice funeral service in this State to any person holding a valid license for the practice of funeral service or its equivalent in another state, territory or the District of Columbia having substantially similar requirements to those existing in this State upon application therefor and payment of the fee prescribed by regulation of the Board; provided such state, territory, or the District of Columbia recognizes licenses issued by the Board.

Drafting Note: Authority to arrange reciprocity is now in § 54.1-103 for all boards.

§ 54.1-2809. § 54-260.75. Penalty for violation of chapter Penalties.—Any person, partnership, corporation, association, or his or her or its agents or representatives employees who shall violate any of the provisions of this chapter shall be deemed guilty of a Class 1 misdemeanor; and, upon conviction thereof, be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both such fine and imprisonment.

Drafting Note: There is no change in the law.

Article 2.

Licensure of Funeral Establishments.

§ 54.1-2810. § 54-260.73. Licensure of funeral establishments.—No person shall conduct, maintain, manage or operate a funeral establishment unless a permit license for each such establishment has been issued by the Board and is conspicuously displayed in such funeral establishment.

No permit license to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge, full time therein, a person licensed for the practice of funeral service or a licensed funeral director.

Applications for such funeral establishment permits licenses shall be made on blanks furnished by the Board and filed by the owner or the registered agent of the corporation with the Board.

Each funeral establishment permit license shall expire annually at a time prescribed by Board regulation of the Board. A permit license may be renewed upon application therefor and payment of the fee prescribed by the Board within thirty days of the its expiration date of the permit. The Upon expiration of the license, the Board shall notify each person to whom a permit is issued upon expiration of the permit licensee of the provisions of this paragraph section. Renewal of a permit license after the expiration of the thirty-day period shall be in the discretion of the Board.

Violations of any provisions of § 54-260.74 ~~this chapter~~ or any rules or Board regulations of the Board committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such a funeral establishment shall be considered sufficient cause for suspension or revocation of such the funeral establishment permit license .

No An operator of a funeral establishment shall not allow any person licensed for the practice of funeral service to operate out of such his funeral establishment unless such the licensee is the operator or an employee of the operator of a licensed funeral establishment which has been granted a permit by the Board .

A funeral service establishment must contain a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation, or other disposition; provided, however, that a funeral service establishment having more than one location at which it performs funeral services need not maintain more than one such preparation room.

The Board may adopt such rules, regulations and classifications as may be reasonable, sufficient and proper to define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in the funeral establishment.

Drafting Note: There is no change in the law. The term "license" is being substituted for "permit" for consistency. The struck language is included in the next section.

§ 54.1-2811. *Facility requirements.*—A funeral service establishment shall contain a preparation room equipped with a tile, cement or composition floor, proper drainage and ventilation, the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition, and separate restroom facilities.

A funeral service establishment having more than one location at which it performs funeral services shall not be required to maintain more than one preparation room.

The Board may adopt regulations and classifications to prescribe proper drainage and ventilation and necessary instruments and supplies in preparation rooms and separate restroom facilities.

Drafting Note: This new section consists of the struck language in § 54-260.73 (new § 54.1-2810).

§ 54.1-2812. ~~§ 54-260.71-1.~~ Itemized statement and general price list of funeral expenses to be furnished.—Every person licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with the care and disposition of the body of a deceased person.

Individuals inquiring in person about funeral arrangements or the prices of funeral goods shall be given the general price list. Upon beginning discussion of funeral arrangements or the selection of any funeral goods or services, the general price list must be offered by the funeral licensee.

The itemized statement shall include, but not be limited to, the following charges: casket, other funeral merchandise, vault or other burial receptacle, facilities used, any and all transportation costs, embalming, preparation of the body, other professional services used and disclosure statements required by the Federal Trade Commission, which shall be set forth in a clear and conspicuous manner.

Further, there shall be included a statement of all anticipated cash advances and expenditures requested by such the person contracting for the funeral arrangements and such other items as may be required by regulation of the Virginia Board of Funeral Directors and Embalmers. Such The statement shall be furnished to the party person contracting for such funeral arrangements at the time such arrangements are made if such party the person is present and, if not present, no later than the time of the final disposition of the body.

The general price list and itemized statement of funeral expenses shall be in conformity comply with forms as may be prescribed by regulation of the Board. All regulations promulgated herewith shall be such as will promote the purposes of this section.

Drafting Note: No change in the law.

Article 3.

Licensure of the Practice of Funeral Service,

Funeral Directors and Embalmers.

§ 54.1-2813. License for the practice of funeral service.—To be licensed for the practice of funeral service, a person shall (i) be a least eighteen years of age; (ii) not have been convicted of a felony; (iii) hold a high school diploma or its equivalent; (iv) have completed two years as a resident trainee; (v) have graduated from a school of mortuary science or funeral service approved by the Board; and (vi) have passed the examination for licensure.

The Board, in its discretion, may license an individual convicted of a felony if he has been pardoned or has had his civil rights restored.

The Board, in its discretion, may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

Drafting Note: The provisions of this section are transferred from § 54-260.70 (see new also § 54.1-2804).

§ 54.1-2814. Examination.—Each applicant for license for the practice of funeral service shall be examined orally or in writing on:

1. Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health;
2. Funeral service arts and sciences including embalming and restorative art;
3. Funeral service administration including accounting, funeral law, psychology, and funeral principles, directing and management.

The Board may recognize other examinations that it considers equivalent to its examination.

Drafting Note: The provisions of this section were transferred from § 54-260.70 (see also § 54.1-2804).

§ 54.1-2815. ~~§ 54-260.70:1.~~ Application for license; how license signed; duration.— ~~A.~~ All applications for examination for a license for the practice of funeral service shall be upon forms furnished by the Board and shall be accompanied by a fee prescribed by regulation of the Board .

~~B.~~ All licenses shall be signed by the president and secretary of the Board and have stamped with the seal of the Board affixed thereto .

~~C.~~ All licenses shall be issued or renewed for a period prescribed by the Board, not exceeding two years.

Drafting Note: There is no change in the law.

§ 54.1-2816. ~~§ 54-260.70:2.~~ License renewal; failure to return renewal form.— ~~It~~ At least sixty days prior to the expiration of a license, the Board shall be the duty of the Board to mail to each person licensed to practice funeral service, embalming or funeral directing whose name appears upon the register of the Board at the last address furnished by such person to the Board, at least sixty days prior to the expiration of such person's license a printed blank form to be completed and returned to the Board together with the prescribed fee prescribed by regulation of the Board . The license of every such any person who does not return the completed form prior to the date of expiration shall automatically expire and become invalid . Upon expiration the The Board shall immediately notify the person of the expiration and the reinstatement provisions of this section requirements . The Board shall reinstate an expired license upon receipt, within thirty days of the notice of expiration , of the completed form and the additional prescribed fee prescribed by regulation of the Board . Reinstatement after that date the thirty-day period shall be within at the discretion of the Board in accordance with regulations established therefor .

Drafting Note: There is no change in the law.

§ 54.1-2817. ~~§ 54-260.72.~~ Resident trainees.—A person desiring to become a resident trainee shall apply on a form provided by the Board. The application shall state that the applicant has not been convicted of a felony and is the graduate of a high school or the equivalent thereof. The Board, in its discretion, may approve an application to be a resident trainee for an individual convicted of a felony, if he has been pardoned or has had his civil rights restored. The application must be sustained by oath of the applicant and be accompanied by a fee prescribed by regulation of the Board. The applicant shall attest that he has not been convicted of a felony and holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a resident trainee for an individual convicted of a felony, if he has

been pardoned or has had his civil rights restored.

The Board, in its discretion, may refuse to approve an application to be a resident trainee for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall instruct the secretary to issue a certificate of resident traineeship. When a resident trainee wishes to get receive in-service training with from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and at any time thereafter such the resident trainee later leaves the proctorship of the licensee whose service has been entered, it shall be the duty of such the licensee to shall give such the resident trainee an affidavit showing the length of time served with him; which. The affidavit shall be filed with the Board and made a matter of record in that office; and if such. Any resident trainee thereafter seeks seeking permission to continue in-service training in this Commonwealth, shall submit a request for permission to do so shall be submitted to the Board.

A certificate of resident traineeship issued as herein provided shall be signed by the resident trainee and shall be renewable at such time and upon payment of such fee as prescribed by regulation of the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered resident trainee at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time prescribed by regulation of the Board, a penalty fee prescribed by regulation of the Board for the lapse in renewal shall be due; in addition to the renewal fee.

The registration of any resident trainee who is actually engaged in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of such his service and such person may be relieved of such renewal fees and penalties as the Board may deem justifiable and expedient. The Board may also waive the renewal fees for such military personnel.

All registered resident trainees registered as provided herein shall be required to report to the Board at least every six months upon forms provided by the Board, showing the work which has been completed during the preceding six months of resident traineeship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during such this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such resident trainee shall be becomes eligible to be examined on his qualifications to receive a license for the practice of funeral service, evidence required by this chapter shall be presented along with an affidavit from the licensee or affidavits from the any licensees licensee under whom the trainee worked showing that the trainee has assisted in the embalming of at least twenty-five bodies and that the trainee has assisted in the conducting of at least twenty-five funerals during resident traineeship. In all applications of resident trainees for licenses for the practice of funeral service under this chapter, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the resident traineeship required for any license granted by the Board shall not entitle him to any privilege except as a qualification to be examined for such license as provided in this chapter.

No Credit for such examination shall not be allowed for such any two-year period of resident traineeship that has been completed more than three years next preceding any prior to application for such license nor or more than five years next preceding any prior to examination for such license; however, . However, the Board may waive the these limitations of time prescribed in this section for any person during the period of his service in the armed service of the United States where when application for such the waiver is made in writing within six months of severance therefrom leaving service, and in any case in which the Board by majority vote of its members present determines in its discretion that the enforcement thereof of these limitations will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of resident traineeship for violation of any provision of this chapter.

At the same time not No more than two resident trainees shall be permitted to register concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered resident trainee must be actively employed with by a funeral establishment as defined in this law.

After July 1, 1972, no further registration as an apprentice funeral director or an apprentice embalmer shall be received by the Board, but any person who has registered prior thereto as an apprentice funeral director or an apprentice embalmer and has met all other requirements of law in effect at the time of such registration shall be entitled to receive a funeral director's or embalmer's license.

Any person who is licensed in another state to embalm and direct funerals and who has actively and continuously been employed full time for a ten-year period immediately preceding the filing of an application shall be exempted from the requirement of completing two years as a resident trainee as provided in § 54-260.70, provided he comes from a state which has enacted this or a similar provision regarding out-of-state licenses, and shall only be required to take the Virginia Funeral Service Examination.

Any person who is licensed in another state to embalm and direct funerals and who has actively and continuously been employed full time for a five-year period immediately preceding the filing of an application shall be exempted from having to complete one year of the two-year resident trainee requirement provided for in § 54-260.70, provided he comes from a state which has enacted this or a similar provision regarding out-of-state licenses. Such person shall only be required to take the Virginia Funeral Service Examination after completing one year as a resident trainee.

Drafting Note: The struck provisions are no longer necessary. Reciprocity agreements are authorized under new § 54.1-103 for all boards.

§ 54.1-2818. § 54-260.71. Registration and display of license ; permits for transportation of bodies .- The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this chapter shall cause a registration card to be filed in the office of the Board of Health of the county or city in which he practices his profession, or if there be no Board of Health in such county or city, at the office of the clerk of the court of such county or city having jurisdiction for the recordation of deeds. All such licenses ; certificates and renewals thereof shall be displayed in a conspicuous place in the office establishment of the holder thereof . No transportation permit shall be issued by any local health department or issuing authority to any person who has not filed a registration card; provided, that any local health department or issuing authority is hereby authorized to grant a transportation permit to any funeral service licensee coming from beyond the jurisdiction of said health department or issuing authority upon the exhibition of a copy of said license or renewal to said registrar. It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless said body be accompanied by a removal or shipping permit.

Drafting Note: The provisions relating to local health department permitting are no longer necessary.

Article 4.

Registration of Surface Transportation and Removal Services.

§ 54.1-2819. § 54-260.74:1. Registration of surface transportation and removal services.-Any person, private business or funeral service establishment, except a common carrier engaged in interstate commerce, the Commonwealth and its agencies, shall apply for and receive a registration as a transportation and removal service in order to be authorized to engage in the business of surface transportation or removal of dead human bodies in this Commonwealth.

Such Surface transportation and removal services shall not arrange or conduct funerals ; nor , provide for the care or preparation, including embalming, of dead human bodies ; nor , or sell or provide funeral-related goods and services without the issuance of a Virginia funeral service establishment permit license .

The Virginia Board of Funeral Directors and Embalmers shall promulgate rules and regulations to provide standards and qualifications for such registration including proper procedures in the handling of all dead human bodies being transported, application process for registration, and establishment of registration fees. Such rules and These regulations shall not require the use of a casket for transportation. Any licensed funeral service establishment shall receive such registration as part of its funeral service establishment permit license without the necessity of additional application or fee. However, such establishment shall be subject to the rules and regulations pertaining to transportation and removal services.

All registrations as a surface transportation and removal service shall be renewed annually and no person, private business or funeral service establishment shall engage in the business as a surface transportation and removal service without holding a valid registration. All registered services shall display a copy of such registration in a conspicuous place within the establishment.

Any surface transportation or removal service which is not registered or persons who knowingly engage in transportation or removal services without registration shall be subject to the disciplinary actions provided in §§ 54-260.74 and 54-961 or the penalty set forth in § 54-260.75 *this chapter*.

Nothing contained in this *This* section shall *not* be construed to prohibit private individuals from transporting or removing the remains of deceased family members and relatives either by preference or in observation of religious beliefs and customs.

Drafting Note: There is no change in the law.

CHAPTER 29.

MEDICINE AND OTHER HEALING ARTS.

Article 1.

General Provisions.

§ 54.1-2900. 54-273. Definitions.— When used in this chapter unless expressly stated otherwise

“Board” means the Virginia State Board of Medicine.

“The healing arts” means the art or science or group of arts or sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

“Practice of medicine or osteopathy” means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

“Practice of chiropractic” means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy. It does not include the use of surgery, obstetrics, osteopathy, nor the administration nor prescribing of any drugs, medicines, serums or vaccines.

“Practice of podiatry” means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. The State Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

“Practice of physical therapy” means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who because of trauma, disease or birth defect present physical and/or emotional disorders. The term “physical therapy” as used in this chapter does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization. Nothing in this definition shall be construed to limit or restrict the practice of any person licensed by the Board as other than a physical therapist, nor shall anything in this definition limit or restrict the giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in health clubs and spas, public or private.

“Practice of clinical psychology” means the offering by an individual of his services to the public as a clinical psychologist.

“Clinical psychologist” means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions, or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures, including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. Nothing in this definition shall be construed to limit or restrict any person licensed by a board as defined in § 54-950 from rendering services which they are licensed to provide.

“Acupuncture” is an experimental therapeutic modality, used in the practice of the healing arts, intended to alleviate pain, and involving the selective stimulation of the human body’s neurological mechanisms by the insertion of needles.

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

“Acupuncture” means an experimental therapeutic modality, used in the practice of the healing arts, intended to alleviate pain and involving the selective stimulation of the human body’s neurological mechanisms by the insertion of needles.

“Board” means the Board of Medicine.

“Clinical psychologist” means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures, including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. This definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which they are licensed to provide.

“Healing arts” means the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

“Practice of chiropractic” means the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs, medicines, serums or vaccines.

“Practice of clinical psychology” means the offering by an individual of his services to the public as a clinical psychologist.

“Practice of medicine or osteopathic medicine” means the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method.

“Practice of physical therapy” means, upon medical referral and direction, the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical or electronic measures and procedures of individuals who, because of trauma, disease or birth defect, present physical and emotional disorders, but does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes including cauterization.

“Practice of podiatry” means the medical, mechanical and surgical treatment of the ailments of the human foot and ankle, but does not include amputation proximal to the metatarsal-phalangeal joints. The Board of Medicine shall determine whether a specific type of treatment of the foot and ankle is within the scope of practice of podiatry.

Drafting Note: The language concerning health clubs and spas has been transferred to § 54.1-2901. However, there is no change in the law.

§ 54.1-2901. § 54-276. Exceptions and exemptions generally.— Nothing in this chapter shall be construed to prevent or forbid the domestic administration of family remedies, or the manufacture or sale of proprietary medicines in this State by licensed druggists, or the advertising or sale of commercial appliances or remedies, nor to prevent or forbid the fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracemaker or prosthetist for the purpose of having a three-dimensional record of the deformity, provided such bracemaker or prosthetist has received a prescription from a licensed physician directing the fitting of such casts, provided that these specified activities are conducted in conformity with the law of Virginia authorizing and regulating such activities.

§ 54-276.1. Rendering first aid, etc. The licensure requirements of this chapter shall not be construed to apply to persons rendering first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter.

§ 54-276.2. Practice of religious tenets in ministrations to the sick. Nothing in this chapter shall be construed to prohibit or require the licensing of the practice of the religious tenets of

any church in the ministrations to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation.

§ 54-276.3. Dentists, pharmacists or optometrists. Nothing in this chapter shall be construed to apply to or interfere with dentists or pharmacists within the scope of their usual professional activities, nor shall this chapter apply to registered optometrists authorized to practice under the laws of this State while engaged in such practice.

§ 54-276.4. Nurses, registered midwives, masseurs or other persons. Nothing in this chapter shall be construed to apply to or interfere with nurses, registered midwives, or masseurs who publicly represent themselves as such, within the scope of their usual professional activities, nor to any other persons in the lawful conduct of their particular professions or businesses under state law, while actually engaged in such profession or business. The scope of the usual professional activities of registered professional nurses and graduate laboratory technicians, or other technical personnel who have been properly trained, shall be deemed to include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes, provided these acts are performed under the orders of a person licensed to practice medicine.

§ 54-276.5. Practitioners from other states or countries. A. Nothing in this chapter shall be construed to prevent any legally qualified practitioner from any other state or country who does not maintain an office in this State for professional work from meeting in consultation with legally registered practitioners in this State. Approval of the credentials of such practitioners shall be governed by rules and regulations promulgated by the Board.

B. The Board may issue a license valid for a period not to exceed three months to a physician licensed and in good standing with the applicable regulatory agency in the state, District of Columbia, or Canada where the physician resides when that physician is in Virginia temporarily to practice medicine in a summer camp or in conjunction with patients who are participating in recreational activities. Approval of the credentials of such physicians and the form of such licenses shall be governed by rules and regulations promulgated by the Board. A fee not to exceed twenty-five dollars may be charged by the Board for the issuance of a license authorized by this subsection.

§ 54-276.6. Medical officers, physical therapists or clinical psychologists in service of United States. Nothing in this chapter shall be construed to affect or interfere with the performance of the duties of any commissioned or contract medical officer, physical therapist, or clinical psychologist in active service in the army, navy, coast guard, marine corps, air force, public health service or marine hospital service of the United States while so commissioned and serving.

The provisions of this chapter shall not prevent or prohibit:

- 1. Any person entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice;*
- 2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with regulations promulgated by the Board;*
- 3. Any registered nurse or licensed practical nurse from rendering care under the supervision of a duly licensed physician when such services are authorized by regulations promulgated jointly by the Board of Medicine and the Board of Nursing;*
- 4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate laboratory technician or other technical personnel who have been properly trained from rendering care or services within the scope of their usual professional activities which shall include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes when performed under the orders of a person licensed to practice medicine;*
- 5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of their usual professional activities;*
- 6. Any physician from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by physicians, if such activities or functions are authorized by and performed for such physicians and responsibility for such activities or functions is assumed by such physicians;*

7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in an emergency situation;

8. The domestic administration of family remedies;

9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas.

10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;

11. The advertising or sale of commercial appliances or remedies;

12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracemaker or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracemaker or prosthetist has received a prescription from a licensed physician directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;

13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;

14. The practice of the religious tenets of any church 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;

15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;

16. Any physician licensed and in good standing with the applicable regulatory agency in another state or Canada when that physician is in Virginia temporarily and such physician has been issued a temporary license by the Board from practicing medicine in a summer camp or in conjunction with patients who are participating in recreational activities;

17. The performance of the duties of any commissioned or contract medical officer, physical therapist, podiatrist, or clinical psychologist in active service in the army, navy, coast guard, marine corps, air force, public health service or marine hospital service of the United States while such individual is so commissioned or serving;

18. Any masseur, who publicly represents himself as such, from performing services within the scope of his usual professional activities and in conformance with state law;

19. Any person from performing services in the lawful conduct of his particular profession or business under state law; or

20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225 of this Code.

Drafting Note: This section contains the substance of the following parts of § 54-274 (§ 54.1-2702): paragraph two, part of paragraph three, paragraph four, paragraph five, and paragraph six. It also includes the provisions of §§ 54-276, 54-276.1, 54-276.2, 54-276.3, 54-276.4, 54-276.6, paragraph A of § 54-276.5 and language concerning health clubs and spas from § 54-273. The three-month license is included in § 54.1-2927.

§ 54.1-2902. § 54-274. Unlawful to practice without certificate or license ; Exceptions .— Except as otherwise provided in §§ 54-276 to 54-276.7 and § 8.01-225, It shall be unlawful for any person to practice medicine, osteopathy osteopathic medicine , chiropractic, podiatry, physical therapy or , clinical psychology or as a physicians' or podiatrists' assistant in the Commonwealth without a valid unrevoked certificate or license authorizing such practice issued by the Virginia State Board of Medicine pursuant to the provisions of this chapter and duly recorded as hereinafter provided; and it shall be unlawful for any person who holds a valid unrevoked certificate or license permitting him to practice in Virginia to practice the school or branch of the healing arts for which he holds such certificate or license except within the scope of the definition of such practice contained in § 54-273 .

The provisions in this section shall not be construed to prevent or prohibit any person

entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice contained herein; but in all other respects the provisions of this chapter shall be applicable; however, nothing in this chapter shall be construed to prevent or prohibit any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with rules and regulations promulgated by the Board.

Nothing in this chapter shall prohibit, limit, restrict or prevent the rendering of any medical or health services by a registered nurse or a licensed practical nurse under the supervision of a duly licensed physician when such services are authorized by rules and regulations jointly promulgated by the Virginia State Board of Medicine and the Virginia State Board of Nursing, which boards shall be jointly responsible for the implementation thereof. Pending the outcome of the next National Specialty Examination, the boards may, at their discretion, jointly grant provisional certification to nurse practitioners. The boards may issue a certification by endorsement to an applicant to practice as a nurse practitioner provided the applicant has been duly certified as a nurse practitioner under the laws of another state if, in the opinion of the boards, the applicant meets the qualifications for certification required of nurse practitioners in this Commonwealth.

Neither the provisions of this chapter nor the provisions of Chapters 28, Article 3 (§ 54-936 et seq.), 13.1 (§ 54-267.1 et seq.), 14 (§ 54-268 et seq.) or Chapter 15.1 (§ 54-524.1 et seq.) of this title shall be construed to prohibit or prevent a physician from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by physicians, if such activities or functions are authorized by and performed for such physicians and if responsibility for such activities or functions is assumed by such physicians.

Nothing in this chapter shall prohibit, limit, restrict or prevent the rendering of medical advice or information by way of any form of telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state or the District of Columbia, to emergency medical personnel acting in an emergency situation.

The Board may, in its discretion, promulgate rules and regulations providing for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program, as defined by the regulations of the Board, under direct supervision of a licensed physical therapist.

Drafting Note: The language deleted from this section is included in new §§ 54.1-2901, 54.1-2943, and 54.1-2957.

§ 54.1-2903. ~~§ 54-275.~~ What constitutes practice.—Any person shall be regarded as practicing the healing arts and some school or branch thereof within the meaning of this chapter who actually engages in such practice as defined in § 54-273 *this chapter*, or who opens an office for such purpose, or who advertises or announces to the public in any manner a readiness or ability so to practice in any county or city of the State or who uses in connection with his name the words or letters "Doctor," "Dr.," "M.D.," "D.O.," "D.P.M.," "D.C.," "Healer," "Physical Therapist," "R.P.T.," "P.T.," "L.P.T.A.," "Clinical Psychologist," or any other title, word, letter or designation intending to designate or imply that he is a practitioner of the healing arts or of any school or branch thereof or that he is able to heal, cure or relieve those who may be suffering from any injury, deformity or disease of mind or body.

The provisions of this section applicable to persons shall also, to the extent applicable, apply to groups of persons and corporations.

Except where persons other than physicians are required to sign birth certificates, Signing a birth or death certificate, or signing any statement certifying that the person so signing has rendered professional service to the sick or injured, or signing or issuing a prescription for drugs or other remedial agents, shall be prima facie evidence that the person signing or issuing such writing is practicing the healing arts and some school or branch thereof within the meaning of this chapter *except where persons other than physicians are required to sign birth certificates*.

Drafting Note: There is no change in the law.

§ 54.1-2904. ~~§ 54-315.1.~~ Biennial renewal of licenses; copies; fee; lapsed licenses; reinstatement; penalties.—A. Every license to practice medicine, osteopathy, chiropractic, podiatry, physical therapy, or clinical psychology granted under the provisions of this chapter shall be renewed biennially by such time as *prescribed by the Board may prescribe by regulation*. The Board shall mail an application for renewal of a license to every licensee. Failure to receive such an application shall not excuse any licensee from the requirements of renewal specified

herein . The person receiving such application shall furnish the information requested thereon and return the form to the Board with the *prescribed* renewal fee as *prescribed* by the Board . Copies of licenses may be obtained as provided in the Board's regulations.

B. Any licensee who allows his license to lapse by failing to renew the license or failing to meet professional activity requirements stipulated in the rules and regulations may be reinstated by the Board upon submission of evidence satisfactory to the Board that he is prepared to resume practice in a competent manner and upon payment of the *prescribed* fee *prescribed* by the Board .

C. Any person practicing medicine, osteopathy, chiropractic, podiatry, physical therapy or clinical psychology during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties for violation of this chapter.

Drafting Note: There is no change in the law.

§ 54.1-2905. ~~§ 54-315.2.~~ Biennial list of ~~certificate holders~~ licensees .—On or before February 1 of each odd-numbered year , the Board shall prepare a list of the names and addresses of all persons to whom ~~certificates~~ of renewal licenses have been issued, classifying such names alphabetically under appropriate designations indicating the school of practice of each ~~certificate holder licensee~~ . In the discretion of the Board such list, or a supplemental list, may be ~~arranged~~ arrange this list or a supplemental list according to the counties and cities of the Commonwealth. The Board shall provide for the publication and distribution of the lists or any part or parts thereof in such manner as it may deem appropriate. All fees collected by the Board for such publication shall be deposited to the account of the State Board of Medicine in the special fund for the Department .

Drafting Note: There is no change in the law.

§ 54.1-2906. ~~§ 54-325.1.~~ Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability. —A. The chief administrative officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall 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 (~~§ 54-267.1 et seq.~~), 15.1 (~~§ 54-524.1 et seq.~~) or 28 (~~§ 54-923 et seq.~~) of this title by a health regulatory board 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. of substance abuse ; or b. ~~[Repealed.]~~ e. 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 denial or termination of employment, denial or termination of privileges or restriction of privileges, while under investigation or during disciplinary proceedings, taken or begun by the institution as a result of conduct involving professional ethics, professional incompetence, moral turpitude, or substance abuse.

4. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or a committee thereof for any reason related to possible medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance 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. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made promptly and in any event within five days of when the chief administrative officer learns of such commitment or admission.

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~~ *alleged to have resulted 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.

Drafting Note: There is no change in the law.

~~§ 54.1-2907. § 54-317.3.~~ Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.—A. Every practitioner of the healing arts in the Commonwealth who treats professionally any person licensed under this chapter or Chapters 8 (~~§ 54-146 et seq.~~), 13.1 (~~§ 54-367.1 et seq.~~) or 15.1 (~~§ 54-524.1 et seq.~~) or Article 3 (~~§ 54-036 et seq.~~) of Chapter 28 of this title by the Board of Dentistry, the Board of Medicine, the Board of Nursing, the Board of Pharmacy or the Board of Psychology shall, unless exempted by subsection C hereof, report to the appropriate board whenever any such health professional is:

1. Treated for mental, emotional or personality disorders ; , unless the attending practitioner has determined that there is a reasonable probability that the person being treated is competent to continue in practice or would not constitute a danger to himself or to the health and welfare of his patients or the public; or

2. Treated for drug addiction or chronic alcoholism.

Any report required by this section shall be in writing directed to 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. 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~~ *alleged to have resulted* therefrom unless such person acted in bad faith or with malicious intent.

C. Medical records or information learned or maintained in connection with an alcohol or drug abuse 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.

Drafting Note: There is no change in the law.

~~§ 54.1-2908. § 54-317.4.~~ Reports of disciplinary action against health professionals; immunity from liability.—A. The president of the Medical Society of Virginia, the Osteopathic Medical Association, the Virginia Chiropractors Association, Inc., the Virginia Academy of Clinical Psychologists, the Virginia Psychological Association (regarding clinical psychologists only), the ~~Podiatry Society of Virginia~~ *Virginia Podiatric Medical Association* and the Virginia Physical Therapy Association shall report to the ~~Virginia State~~ Board of Medicine any disciplinary action taken by his organization against any member of his organization licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

B. The president of any local component society of the Medical Society of Virginia shall report to the ~~Virginia State~~ Board of Medicine any disciplinary action taken by such component society against any of its members licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

C. Any report required by this section shall be in writing directed to the ~~Virginia State~~ Board of Medicine, 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.

D. 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.

E. In the event that any organization enumerated in subsection A above or any component

thereof receives a complaint against one of its members, such organization may, in lieu of considering disciplinary action against such member, request that the Board investigate the matter pursuant to Article 5 (§ 54-316 et seq.) or Article 5-1 (§ 54-321.3 et seq.) of this chapter, in which event any person participating in the decision to make such a request or testifying in a judicial or administrative proceeding as a result of such request shall be immune from any civil liability ~~resulting alleged to have resulted therefrom~~ unless such person acted in bad faith or with malicious intent.

Drafting Note: There is no change in the law.

~~§ 54.1-2909. § 54-317.4:1.~~ Further reporting requirements.—A. ~~In addition to the reporting requirements set forth in §§ 54-317.3 and 54-317.4, the~~ The following matters shall be reported to the Board:

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;

2. Any malpractice judgment against a person licensed under this chapter;

3. Any incident of two settlements of malpractice claims against one person licensed under this chapter within a three-year period; and

4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or may be professionally incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of his profession.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the

4. All health care institutions licensed by the Commonwealth; and

5. The malpractice insurance carrier of any person who is the subject of a judgment or of two settlements within a three-year period. The carrier shall not be required to report any settlements except those in which it has participated which have resulted in at least two settlements on behalf of one person during a three-year period.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the facts required to be reported.

E. 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 or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

Drafting Note: There is no change in the law.

~~§ 54.1-2910. § 54-317.5.~~ Confidentiality of investigative information required.—A. Any reports, information or records received and maintained by the medical complaint investigation committee or the Virginia State Board of Medicine in connection with possible disciplinary

proceedings, including any such material received or developed by the committee or Board during an investigation or hearing, shall be strictly confidential ; ~~provided, that~~ . However, the Board may only disclose any such confidential information:

1. In a disciplinary hearing before the Board or in any subsequent trial or appeal of a Board action or order;

2. To physician-licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting or denying a physician's hospital privileges ; ~~provided, that if a final determination regarding a violation of §§ 54-316, 54-317 or § 54-317.1 this chapter has been made;~~

3. Pursuant to an order of a court of competent jurisdiction; or

4. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted ; and ; a final determination regarding a violation of §§ 54-316, 54-317 or § 54-317.1 this chapter has been made.

B. Orders of the Board relating to disciplinary action against a physician are not required to be confidential.

C. In no event shall confidential information received, maintained or developed by the committee or Board, or disclosed by the Board to others, pursuant to this section be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide health care services. ~~Nothing in~~ However, this section shall not be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) in Chapter 7 of Title 18.2 of the Code of Virginia.

D. Any person found guilty of the unlawful disclosure of such confidential information possessed by the Board shall be guilty of a Class 1 misdemeanor.

E. Any claim of physician-patient privilege shall not prevail in any investigation or proceeding by the Board acting within the scope of its authority ; ~~provided, that~~ . However, the disclosure of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

F. ~~Nothing in this~~ This section shall not prohibit the Director of the Department of Health Regulatory Boards Regulation , after receiving the prior approval of notifying the Board president or his designee, from disclosing to the Attorney General or the appropriate Commonwealth's attorney investigatory information which indicates a possible violation of any provision of law relating to the manufacture, distribution, dispensing, prescribing or administration of drugs other than drugs classified as Schedule VI drugs and devices in § ~~54-524.84:13~~ by any individual licensed or otherwise regulated by the Virginia State Board of Medicine.

Drafting Note: There is no change in the law.

§ 54-323. Jurisdiction to enjoin unlawful practice.—The circuit courts of this Commonwealth having general equity jurisdiction are hereby invested with jurisdiction and power to enjoin the unlawful practice of medicine, osteopathy, chiropractic, podiatry, physical therapy, or clinical psychology in a proceeding brought by the Board of Medicine or any member thereof, or by any citizen of this State, in the county or city in which the alleged unlawful practice occurred or in which the defendant resides. The remedy by injunction specified herein is in addition to the criminal prosecution and punishment provided for in § 54-322.

§ 54-325. Report of conviction or injunction to Board; suspension or revocation of license.— It shall be the duty of the clerk of every circuit court wherein any conviction is had or any injunction awarded to report the same to the Board, which may thereupon suspend or revoke any certificate or license held by the person so convicted or enjoined.

§ 54-322. Penalty for unlawful practice.—Any person practicing the healing arts or any school or branch thereof, or practicing medicine, osteopathy, chiropractic, podiatry, physical therapy, or clinical psychology in this State, in violation of the provisions of this chapter, shall be guilty of a Class 1 misdemeanor. Each day of such violation shall constitute a separate offense, and in no case shall the person convicted be entitled to recover anything for the services rendered.

§ 54-276.8. Penalty for violation. Any person who shall violate any of the provisions of the

preceding section (§ 54-276.7), or any provisions of this chapter for which no specific penalty is provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly.

Drafting Note: The provisions of §§ 54-276.8, 54-322, 54-323 and 54-325 are eliminated as they are redundant of the general provisions.

Article 2.

Board of Medicine.

§ 54.1-291.1. § 54-282. Board continued; change of title; how constituted ; membership; terms of office; change of residence; executive director; etc.—The Board of Medical Examiners for the State of Virginia is continued and shall hereafter be known as the Virginia State Board of Medicine ; and shall consist of one medical physician from each congressional district, one osteopathic physician, one podiatrist, one chiropractor, one clinical psychologist, and two citizen members from the Commonwealth at large. Citizen members shall have all voting and participation rights of other members.

§ 54-283. Terms of office; qualifications; appointment of members generally.— The term of office of the members of the Board shall be five years ; or until their successors are appointed and have qualified . The professional members shall be persons learned in their particular schools of practice and duly licensed, active practitioners in this Commonwealth.

As the terms of office respectively of the members expire by limitation the Governor shall appoint, to fill the vacancies so occasioned, qualified persons whose terms shall be for five years from the day on which that of their immediate predecessors expired. All vacancies occurring on the Board shall be filled by the Governor.

§ 54-285. Limitation on number of terms.—No person shall be eligible to serve for or during more than two successive terms.

§ 54-286. Removal of member.—The Governor may remove any member for misconduct, incapacity, or neglect of duty, and he shall be the sole judge of the sufficiency of the cause for removal. He shall report every such removal at once to the General Assembly if it is in session, and if not at the beginning of the next session.

§ 54-287. Change of residence vacating office.— If any medical physician member of the Board ceases to reside in the district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant.

§ 54-288. Oath of office. The members of the Board shall qualify by taking the usual oath of office before the circuit court of the county or corporation court of the city in which they respectively reside, or before the judge thereof in vacation.

§ 54-289. Officers of Board. The officers of the Board shall be a president, vice-president and a secretary, who shall also act as treasurer, who shall be members of and selected by the Board.

§ 54-290. Meetings and quorum. Regular meetings of the Board shall be held at such times and places as the *prescribed by the Board shall prescribe, and special . Special* meetings may be held upon the call of the president and any ten members ; but there shall be not less than one regular meeting each year . Eleven members of the Board shall constitute a quorum.

§ 54-290.1. Executive committee. The Board is authorized to may establish an executive committee ; which committee shall be composed of the president, vice-president, the secretary and four other members of the Board appointed by the president. In the absence of the Board, the executive committee shall have full powers to take any action and conduct any business authorized by this chapter. Five members of the executive committee shall constitute a quorum. Such Any actions taken or business conducted by the executive committee shall be acted upon by the full Board as soon as practicable.

§ 54-291. Rules, regulations and bylaws. The Board may, subject to the General Administrative Agencies Act of the Code of Virginia, adopt such rules and regulations, not inconsistent with the laws of this State, as may be necessary to carry into effect the provisions of this chapter; the Board may also, subject to the General Administrative Agencies Act, adopt rules and regulations, not inconsistent with the laws of this State, governing such aspects of the practice of any diagnostic or therapeutic modalities or procedures as are not otherwise specifically dealt with in this title. The Board shall, however, adopt no rule restricting the

freedom of choice of a licensed practitioner as to where he may practice his profession.

Such rules shall include a catalogue of fees for licensure, examination, renewal or reinstatement of licenses and any other service rendered by the Board and such fees shall be in amounts sufficient to finance the cost of operation and enforcement of the provisions of this chapter.

No bylaw or rule by which the vote of a majority of the Board is required for any specified action shall be suspended or repealed by a smaller vote than that required for action thereunder.

§ 54-290.2. Executive director; qualifications.— There shall be an executive director for the Board of Medicine who shall be licensed or eligible for licensure in the Commonwealth as a physician.

Drafting Note: Sections 54-282, 54-283, 54-285, 54-286, 54-287, 54-288, 54-289, 54-290, 54-290.1, and 54-290.2 are consolidated here. Appointments and successions are covered in new § 54.1-107 and removal is already covered in § 2.1-43. Section 54-291 is no longer necessary because of general provisions (see §§ 54.1-100, and 54.1-2400). The oath provisions are covered in § 49-1.

§ 54.1-291.2. § 54-284. Appointments from nominees of medical, etc., societies *Nominations* .— ~~The Governor Nominations may select be made for~~ the medical physicians from a list of at least three names for each vacancy to be recommended submitted to the Governor by the Medical Society of Virginia, the clinical psychologist from a list of three names recommended, submitted by the Virginia Academy of Clinical Psychologists, and the osteopathic physician, podiatrist and chiropractor members, respectively, from a list of at least three names for each such vacancy to be nominated to him or to the Governor—elect submitted by June 1 of each year by their respective state societies. In no case shall the Governor be bound to make any appointment from among the nominees of the respective societies. The Governor shall promptly may notify the society, which may make nominations, of any professional vacancy other than by expiration among the members of the Board representing the particular profession and like nominations may be made for the filling of the vacancy.

Recommendations shall be by vote of the majority present at the meeting of the respective societies, and shall be certified to the Governor by the president and secretary of the society making the recommendation.

Drafting Note: All sections on nominations are being conformed.

§ 54.1-291.3. § 54-300.2. Rules and regulations for all Examinations.—The Board shall prescribe rules and regulations governing the content, administration and grading of examinations for each branch of the healing arts.

§ 54-300.3. Substituted examinations.—~~The~~ In lieu of any or all parts of the prescribed examinations, the Board may, in its discretion, in lieu of any or all parts of the examinations prescribed by § 54-297, accept a certificate issued by either (i) the National Board for the appropriate branch of the healing arts or (ii) a state board prior to 1970 attesting the satisfactory completion of an examination given by that board if, in the opinion of the Virginia State Board of Medicine, the substituted examination material is substantially equivalent to the material for which it is substituted, and the passing grades are in each instance the equivalent of the grades required to be made on the corresponding examinations administered by the Virginia State Board of Medicine .

§ 54-304. Conduct of examinations.—All written examinations, together with practical tests when the majority of the Board giving the particular examination deems these necessary, and all substitution of examinations or acceptance of certificates in lieu of examinations as provided in § 54-300.3 shall be conducted in such manner as shall be entirely fair and impartial to all individuals and every school or branch of the healing arts. The Board shall insure ensure that the identity of an applicant corresponding to a given examination paper is not known to members of the Board until after the applicant has been granted or refused a certificate license

Drafting Note: This section consolidates §§ 54-300.2, 54-300.3 and 54-304.

§ 54-296. Requiring Proof of identity or right to practice; prosecutions. (a) Proof of identity. — The Board, or any member thereof, may at any time inquire into the identity of any person claiming to be a licensed or registered practitioner, and may serve upon him a notice in writing requiring him to make reasonable proof, satisfactory to the Board, that he is the identical person licensed to practice medicine, osteopathy, chiropractic, podiatry, physical therapy, or clinical psychology, under the certificate or license by virtue of which he claims the right to practice.

(b) ~~Proof of right to practice.~~ The Board, or any member thereof, may investigate any person practicing or attempting or offering to practice medicine, osteopathy, chiropractic, podiatry, physical therapy or clinical psychology, in this State and may require such person to produce his certificate, or other satisfactory evidence sufficient to establish his right to practice under this chapter.

(c) ~~Prosecution for violation.~~ In case any such person fails or refuses to establish his identity or fails or refuses to prove his right to practice, the investigator shall report the facts to the Commonwealth's attorney of the county or city wherein such person is practicing or attempting or offering to practice, and it shall be the duty of the Commonwealth's attorney to immediately prosecute such person for violating the provisions of this chapter, and upon the trial, the burden of proof shall be upon such person to establish his right to practice.

(d) ~~Jurisdiction.~~ The circuit court of the county wherein the offense is committed shall have original jurisdiction concurrent with the county court, and the circuit court of the city wherein the offense is committed shall have original jurisdiction concurrent with the municipal court of the city, in the trial of such person for such offense.

Drafting Note: The provisions of § 54-296 have been struck as they were unnecessary or redundant.

§ 54.1-2914. § 54-317. ~~What constitutes Unprofessional conduct.—~~ A. Any practitioner of medicine, osteopathy, chiropractic, podiatry, physical therapy or clinical psychology or any physical therapist assistant *the healing arts regulated by the Board* shall be considered guilty of unprofessional conduct if he:

(1) ~~1.~~ Undertakes or engages in any manner or by any means whatsoever to procure or perform or to aid or abet in procuring or performing a criminal abortion; or

(2) ~~2.~~ Engages in the practice of any of the healing arts under a false or assumed name, or impersonates another practitioner of a like, similar or different name; or

(3) ~~3.~~ Prescribes or dispenses any controlled substance with intent or knowledge that it shall or will be used otherwise than medicinally, or for accepted therapeutic purposes, or with intent to evade any law with respect to the sale, use or disposition of such drug; or

(4) ~~[Repealed.]~~

(5) ~~Causes the publication or circulation or broadcasting of any advertisement or statement in which he claims that he can cure or treat diseases, ailments or infirmities by any secret method, procedure, treatment or medicine, or in which he claims that a manifestly incurable disease or infirmity can be permanently cured; or~~

(6) ~~Advertises or professes or holds himself out as being able and willing to treat human ailments under a system or school of practice other than that for which he holds a certificate or license granted by the Board; or~~

(7) ~~4.~~ Violates any of the provisions of § 54-278 of this chapter on division of fees or practices any branch of the healing arts in violation of the provisions of this chapter; or

(8) ~~5.~~ Being a practitioner of physical therapy, undertakes to practice physical therapy, independently of the referral and direction of a duly licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery; or

6. Being a licensed physical therapist assistant, undertakes to practice independently without direction of a physical therapist or under his supervision or control; or

(9) ~~7.~~ Knowingly and willfully commits any act which is a felony under the laws of this Commonwealth or of the United States, or any act which is a misdemeanor under such laws and involves moral turpitude; or

(10) ~~8.~~ Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts; or

(11) ~~9.~~ Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts or in such a manner as to make ;

10. ~~Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public ; or is unable to practice medicine with reasonable skill and safety~~

to patients by reason of illness, drunkenness, excessive *because of illness* or use of drugs *substance abuse* ; narcotics, chemicals or any other type of material or as a result of any mental or physical condition . In enforcing this subsection, the Board shall upon probable cause, and upon preliminary investigation by informal conference as provided in § 54-318.1, have authority to compel a practitioner to submit to a mental or physical examination by physicians designated by it. Failure of a practitioner to submit to such examination when directed shall constitute an admission of the allegations against him, unless the failure was due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this subsection shall, at reasonable intervals, be afforded an opportunity to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients ; or

~~(13)~~ 12. Publishes or causes to be published in any manner an advertisement relating to his professional practice which ~~(i)~~ is false, deceptive or misleading, ~~(ii)~~ contains a claim of superiority ; or ~~(iii)~~ violates such Board regulations as may be promulgated by the Board governing advertising; or

~~(14)~~ 13. Performs any dishonorable, unethical, unprofessional or unconscionable conduct act likely to deceive, defraud or harm the public; or

~~(15)~~ 14. Violates any provision of law statute or regulation, state or federal, relating to the manufacture, distribution, dispensing or administration of drugs; or

~~(16)~~ 15. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board.

~~(12)~~ B. Being a A practitioner of the healing arts who may lawfully dispense, administer, or prescribe medicines or drugs, eyeglasses, medical appliances or devices, but who is not and not being the holder of a certificate of registration license to practice pharmacy or other relevant license ; engages in selling may not sell medicine , drugs, eyeglasses, or medical appliances or devices to persons who are not his own patients, or sells sell such articles to his own patients either for his own convenience, or for the purpose of supplementing his income ; . provided, However, that the dispensing of contact lenses by a practitioner to his patients shall not be deemed to be for the practitioner's own convenience or for the purpose of supplementing his income ; or .

Drafting Note: Language included in § 54-317 relating to physical examinations of licensees has been moved to new §§ 54.1-2915. There is no change in the law. In order to facilitate parallel structure, subdivision 12 of § 54-317 has been moved to subdivision B.

§ 54.1-2915. ~~§ 54-316.~~ Grounds for Refusal of examination or certificate and for ; suspension or revocation of certificate or license, censure, reprimand or probation ; other disciplinary actions .- A. The Board may refuse to admit a candidate to any examination, and may refuse to issue a certificate or license to any applicant who applies for the same through reciprocity or otherwise , and may suspend for a stated period of time or indefinitely, or revoke any certificate or license held by any person or censure or reprimand such any person or place him on probation for such time as it may designate and direct that during such period he furnish the Board at such intervals as it may direct, evidence that he is not practicing his profession, in violation of the provisions of this chapter, if it finds that such candidate, applicant or licensee for any of the following causes :

~~(1)~~ Has made 1. False statements or representations or has been guilty of fraud or deceit in obtaining admission to the practice, or has been guilty of fraud or deceit in the practice of any branch of the healing arts;

~~(2)~~ Uses intoxicating liquors, narcotics, or other drugs to the extent that he is 2. Chronic alcohol or drug abuse substance abuse rendering him unfit for the performance of his professional obligations and duties;

~~(3)~~ Is guilty of immoral conduct, or of 3. Unprofessional conduct as defined in § 54-317 this chapter ;

~~(4)~~ Is grossly ignorant or careless 4. Gross ignorance or carelessness in his practice, or is guilty of gross malpractice;

~~(5)~~ Is mentally or physically incompetent 5. Mental or physical incompetence to practice his profession with safety to his patients and the public;

~~(6)~~ Has a license to practice a branch of the healing arts revoked, suspended or otherwise

~~restricted~~ 6. Revocation, suspension or restriction of a license to practice a branch of the healing arts in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

B. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to practice the healing arts with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice the healing arts with reasonable skill and safety to patients.

Drafting Note: This section has been revised and the language from § 54-317 relating to mental or physical examinations of licensees has been included here. There is no change in the law.

~~§ 54.1-2916. § 54-317.1. Additional grounds for refusal of examination or certificate ; mandatory suspension or revocation of certificate or license .-~~ A. The Board may refuse to admit a candidate to any examination, may refuse to issue a license ; and may refuse to issue or a certificate to any applicant who applies for the same through reciprocity or otherwise , and shall suspend or revoke ; in the manner provided in § 54-321.2, any certificate or license held by any person if it finds that such the candidate, applicant or licensee:

~~(1) 1. Has been convicted in the courts of this or any other state, territory or country of a any felony or of a any crime involving moral turpitude. The conviction of any offense in another state, territory or country, which if committed in this State would be deemed a felony, shall be held to be a felony under this section without regard to its designation in such other state, territory or country ;~~

~~(2) 2. Has been adjudged legally incompetent by a court of competent jurisdiction, either within or without this State, and in any state if such adjudication is in effect and such the person has not been declared restored to competence.~~

~~B. The conviction of an offense in another state, territory or country, which if committed in Virginia would be a felony, shall be treated as a felony conviction under this section regardless of its designation in the other state, territory or country.~~

Drafting Note: There is no change in the law.

~~§ 54.1-2917. § 54-321.2. Mandatory suspension or revocation by Board; reinstatement; appeal.-~~ Upon proper notification in writing by any person or agency, state or federal, that any person licensed to practice medicine or any of the other healing arts in this Commonwealth has been convicted as described in § 54-317.1 ~~(1) of a felony or has been adjudged legally incompetent as provided in § 54-317.1 (2),~~ which notification shall be accompanied by a certified abstract or copy of the judgment of conviction or adjudication of incompetence, the Board shall forthwith immediately suspend or revoke, without a hearing, the certificate or license of any person so convicted or so adjudged. The Board shall notify such person or his legal guardian, trustee, committee or other representative of the suspension or revocation, in writing ; and such . Such person shall not have the right to practice within this Commonwealth until the suspension or revocation his certificate or license has been terminated reinstated by the Board as hereinafter provided .

~~The clerk of any court in which a conviction of a felony or an adjudication of incompetence is made, who has knowledge that a practitioner of the healing arts has been convicted or found incompetent, shall have a duty to report these findings promptly to the Board.~~

~~Notwithstanding the foregoing, where~~ When a conviction has not become final, the Board may ; in its discretion , decline to suspend or revoke the certificate or license until the conviction becomes final after considering ~~(i) the likelihood of irreparable damage to the practitioner if his certificate or license should be suspended or revoked during the pendency of an ultimately successful appeal, (ii) the likelihood of injury or damage to patients or the public if the license or certificate is not suspended or revoked, and (iii) the seriousness of the offense.~~

Any person whose certificate or license has been suspended or revoked in accordance with the provisions of as provided in this section may apply to the Board for termination of such suspension or revocation and reinstatement of his certificate or license.

Such person shall be entitled to a hearing not later than the *next* regular meeting of the Board ~~next following~~ after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf. The cost of employing such counsel and the expense of obtaining attendance of the witnesses shall be borne by the applicant.

The Board shall have the power to ~~may~~ employ counsel and a stenographer and to summon witnesses ; and the cost thereof shall be paid out of the state treasury . The ~~termination~~ of suspension or revocation and reinstatement of the applicant's certificate or license shall require the affirmative vote of three-fourths of the members at the hearing, at which not less than nine members shall be in attendance. ~~In the discretion of the~~ The Board ; such ~~termination and reinstatement~~ may be ~~ordered~~ *order the reinstatement* without further examination. The proceedings at the hearing shall be recorded formally and shall be certified by the president of the Board or his designee. ~~An appeal from any action of the Board upon such application may be had in the manner provided in § 54-320.~~

The clerk of every court wherein any such conviction or finding of incompetence is made, who has knowledge that a practitioner of the healing arts has been convicted or found incompetent as provided in this section, shall have a duty to promptly report the same to the Board, and the Board may thereupon suspend or revoke any certificate or license held by the person so convicted or adjudged.

Drafting Note: There is no change in the law.

§ 54-320. Appeal from action of Board.—In case the certificate or license is suspended or revoked, or the practitioner is censured, reprimanded or placed on probation, the practitioner affected shall have the right of judicial review of such proceedings in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). If his license is suspended or revoked by the Board, the practitioner shall not engage in the practice of any of the healing arts in the Commonwealth pending his application for and during proceedings in court. Pending the application for review, the practitioner shall not have the right to practice within the Commonwealth.

Drafting Note: The Administrative Process Act is applicable to appeals before all boards through § 54.1-109 (formerly § 54-1.19).

54-292. Employment of counsel; investigations; witnesses; subpoenas; oaths; depositions.—The Board, or any committee thereof, may employ counsel, shall have the power to cause investigations to be made, to compel attendance of witnesses, issue subpoenas, and administer oaths in connection with any investigation, hearing or disciplinary proceeding held under this chapter, and may take testimony or cause depositions to be taken concerning all matters within its jurisdiction.

Drafting Note: Employees, investigations, etc., are covered in §§ 54.1-2505 and 54.1-2506.

§ 54.1-2918. § 54-321.1. Suspension or revocation for violation of hospital or nursing home facility licensing laws.—Whenever the State Board of Health has suspended or revoked any license granted under the provisions of Article 1 (§ 32.1-123 et seq.) 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 resident 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~~ *the* 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~~ *the Board* 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 or license of or prosecute for unlicensed practice any person subject to the laws of Virginia regulating the practice of the healing arts *this chapter* 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.~~

Drafting Note: There is no change in the law.

§ 54.1-2919. § 54-318.1. Procedure upon information that practitioner may be subject to disciplinary action under §§ 54-316 and 54-317.1 ; special committee; conference; findings of committee; reprimand; censure or probation; further proceedings.—Upon receipt of information that a practitioner of any of the healing arts is or may be subject to disciplinary action by the Board on any of the grounds set out in §§ 54-316 and 54-317.1 *forth in this chapter* , the

president may appoint a special committee of three members of the Board, of whom one shall be designated as chairman. The president or his designee shall then notify the executive director and the chairman of the appointment and transmit to the chairman the information which initiated the appointment of the special committee.

The Board shall thereupon mail to the practitioner a statement of such information and a request for an informal conference with the committee at a time and place to be specified in the request. In no case shall the informal conference be held before the expiration of thirty days after the request was mailed unless the practitioner consents to a shorter period. The Board shall also mail to the practitioner, with the request for an informal conference, a statement of the action the committee is authorized to take after such conference. In cases where a practitioner is charged with using intoxicating liquors, narcotics or other drugs to the extent that he is ~~unfit~~ unsafe for the performance of his professional obligations and duties, the committee shall thoroughly evaluate the physical and mental condition of the practitioner together with the facts contained in the report alleging such unprofessional conduct before taking action.

~~If after~~ After such the conference at which the practitioner may appear, if a majority of the committee is of the opinion agrees that a suspension or revocation of the practitioner's license may be justified, or in the event of a violation of the authorized terms of the probation hereinafter authorized, the committee shall present to the Board in writing its findings, and the Board may proceed with a hearing ~~thereon~~ in like manner and with the same effect as is provided in § 54-318.3 for a hearing on charges made directly to the Board.

If after such informal conference, the majority of the committee is of the opinion agrees that the information is without foundation, or that, if true, the facts do not merit a formal hearing before the Board, the committee shall either:

(1) 1. Notify the practitioner in writing that he is fully exonerated of any charge that might affect his right to practice in the Commonwealth;

(2) 2. Reprimand or censure the practitioner;

(3) 3. Place the practitioner on probation for such time as it may designate, and direct that during such period he furnish the committee or its chairman, at ~~such~~ specified intervals as the committee may direct, evidence that he is not practicing his profession in violation of the provisions of this chapter.

~~In cases where~~ When a practitioner is charged with using intoxicating liquors, narcotics or other drugs to the extent that he is unfit for the performance of his professional obligations and duties rendered unsafe to practice his profession, and the committee recommends treatment for the practitioner, the practitioner shall also furnish the committee or its chairman, at ~~such~~ specified intervals as the committee may direct, evidence that he is undergoing such treatment.

~~In the event~~ If the practitioner is reprimanded, censured, or placed on probation by the committee, he may, within thirty days from the date he receives written notice of the action of the committee, notify the chairman in writing that he desires a hearing before the Board, and the committee shall present to the Board in writing its findings and the request for a hearing; and the . The Board shall proceed with a hearing ~~thereon~~ in like manner and with the same effect as is provided in § 54-318.3 for a hearing on charges made directly to the Board. Upon the filing with the committee of the request of the practitioner for a hearing before the Board and the filing with the Board of its findings, all actions of the committee ~~taken hereunder~~ shall be vacated. The action of the committee shall become final at the expiration of the thirty-day period if no request for a hearing before the Board is made within such period.

If the medical member of the Board from the district in which the practitioner involved resides is not named as a member of the committee, he shall have the right to sit with the committee at the conference, but without any vote in the proceedings.

Drafting Note: There is no change in the law.

§ 54.1-2920. ~~§ 54-318.3.~~ Notice and opportunity to be heard required before suspension or revocation of license; exception; allegations to be in writing; practice pending appeal.— ~~(a)~~ The Board shall take no action to revoke or suspend the license of any person licensed hereunder of its licensees except after reasonable notice and an opportunity to be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia and ~~such~~. Such action may be in addition to any penalty imposed by law for ~~such~~ the violation. For the purposes of this section, reasonable notice means written notice mailed at least thirty days prior to the scheduled hearing.

However, the Board may suspend the license of any person licensed hereunder, without a hearing simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety which warrants this action. The Board may meet by telephone conference call when summarily suspending a license, if a good faith effort to assemble a quorum of the Board has failed and in the judgment of a majority of the members of the Executive Committee, the continued practice of the practitioner constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

(b) Allegations of violations of this chapter shall be in writing to the Board or any member thereof.

(c) If his license is suspended or revoked by the Board, the Any practitioner whose license is suspended or revoked by the Board shall not engage in the practice of any of the healing arts in the Commonwealth pending his appeal.

Drafting Note: There is no change in the law.

~~§ 54.1-292.1. § 54-321.1. Granting or refusing new certificate or license after revocation or refusal to reinstate.~~ —When the certificate or license of any person has been revoked or a petition to reinstate the certificate or license of any person has been denied as provided by law, the Board may, after the expiration of twelve months and upon the payment of a fee prescribed by the Board, ~~entertain~~ consider an application for and grant a new certificate or license in the same manner as original certificates or licenses are granted. The granting of a new certificate or license shall require the affirmative vote of three-fourths of the members at a meeting at which not less than nine members are in attendance. In the discretion of the Board, such certificate or license may be granted without further examination.

Drafting Note: There is no change in the law.

~~§ 54.1-292.2. § 54-321.3. Procedure upon information that practitioner may be subject to punitive action under §§ 54-316 or 54-317.1; referral~~ Referral to medical complaint investigation committee; composition, etc. of committees; function; report; immunity; actions. — A. Upon receipt of information that a practitioner of any of the healing arts may be subject to punitive disciplinary action by the Board on any of the grounds set out in § 54-316 or § 54-317.1 this chapter, the Board may in its discretion refer the matter to a medical complaint investigation committee.

~~§ 54-321.4. Composition, selection, etc., of committees.~~ Upon receipt of such complaint, the Board may appoint a A medical complaint investigation committee; consisting of three licensed practitioners of the healing arts may be appointed by the Board. No more than one such practitioner shall have his principal office in the city or county in which the complaint arose. Such appointments shall be made from a list of practitioners who have agreed to serve on such committees. In maintaining such list the Board shall give due regard to the nature of the practice of the practitioner who is the subject of the complaint. The Board shall designate one member of each committee as chairman.

No person appointed to serve on a medical malpractice review panel shall be eligible to serve on a medical complaint investigation committee investigating the same a complaint which the medical malpractice review panel has under review by the medical malpractice review panel.

~~§ 54-321.5. Function and power of committee.~~ B. The function of a medical complaint investigation committee shall be to conduct an informal inquiry for the purpose of recommending to the Board whether sufficient grounds exist to warrant further proceedings by the Board. Such committee shall have full power, as designee of the Board, to subpoena the person who is the subject of the complaint and other witnesses, to take evidence and to require the production of any documents, records or other materials which it deems relevant to the inquiry.

In case of refusal by any person to obey a subpoena or other order issued by the committee or the Board, a court of record may, upon application by the Board, issue an order requiring the person, under such conditions as it deems just, to appear before the Board or committee, to produce documentary evidence or to give other evidence concerning the matter under inquiry. Proceedings before an investigation committee shall be in accordance with rules established by the committee. Testimony before the committee need not be recorded.

~~§ 54-321.6. Submission of evidence and records to Board; report.~~ C. At the conclusion of its inquiry, the committee shall submit all documentary evidence and records to the Board,

accompanied by a report containing a summary of the evidence and the recommendation of the committee regarding further proceedings by the Board. An individual member of the committee may submit a separate report if he is unable to agree with the committee's report.

~~§ 54-321.7. Immunity from liability.~~ In any later hearing of the Board ~~no D.~~ No member of a medical complaint investigation committee may be called as a witness *in any later hearing of the Board* . A member of the committee shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties as a member of the committee unless such person acted in bad faith or with malicious intent.

~~§ 54-321.8. Notification of disciplinary action to be taken by Board.~~ E. The Virginia State Board of Medicine may, after receipt of the recommendation and supporting record from a medical complaint investigation committee, notify the practitioner concerned that it intends to take specified disciplinary action ~~based thereon in accordance with §§ 54-318.1 and 54-318.3~~ .

Drafting Note: This section consolidates §§ 54-321.3, 54-321.4, 54-321.5, 54-321.6, 54-321.7 and 54-321.8.

§ 54.1-2923. ~~§ 54-321.2.1.~~ Medical practices audit committee; function and powers; immunity from civil liability.—A. Whenever restrictions have been placed on the license of a practitioner of the healing arts subsequent to a finding that the practitioner has violated the provisions of this chapter, the Board may appoint a medical practices audit committee. The medical practices audit committee shall review the practice of the disciplined licensee to ascertain whether his practice conforms to the conditions placed on his license by the Board.

B. The committee shall consist of three licensed practitioners of the healing arts. No more than one such practitioner shall have his principal office in the city or county in which the complaint resulting in the disciplinary action arose or the disciplined licensee practices or resides.

Such appointments shall be made from a list of practitioners who have agreed to serve on such committees. In maintaining the list the Board shall give due regard to the nature of the practice of the practitioner who is the subject of the disciplinary action. The Board shall designate one member of each committee as chairman.

No person appointed to serve on a medical malpractice review panel or a medical complaint investigation committee shall be eligible to serve on a medical practices audit committee if in that capacity he has reviewed a claim or investigated a complaint brought against the disciplined licensee.

C. The committee shall have full power, as designee of the Board, to subpoena the person who is the subject of the audit and other witnesses to take evidence and to require the production of any documents, records or other materials which it deems relevant to its review. In case of refusal by any person to obey a subpoena or other order issued by the committee or the Board, a court of record, upon application by the Board, may issue an order requiring the person, under such conditions as it deems just, to appear before the Board or committee, to produce documentary evidence, or to give other evidence concerning the matter under review. Proceedings before an audit committee shall be in accordance with rules established by the committee. Testimony before the committee need not be recorded.

D. A member of a medical practices audit committee may be called as a witness in a subsequent hearing before the Board. A member of the medical practices audit committee shall have immunity from civil liability resulting from any communication, findings, opinion, or conclusion made in the course of his duties as a member of the committee unless such person acted in bad faith or with malicious intent.

Drafting Note: There are no changes.

§ 54.1-2924. ~~§ 54-201.1.~~ Psychiatric Advisory Committee. ~~continued as Psychiatric Advisory Board.~~ —The Psychiatric Advisory Committee ~~appointed by the Board of Medicine is continued and shall hereafter be known as the Psychiatric Advisory Board.~~ The Psychiatric Advisory Board Committee shall be composed of licensed practitioners in this Commonwealth. ~~The Psychiatric Advisory Board and shall examine persons licensed or seeking licensure under this chapter and advise the Board of Medicine concerning the mental or emotional condition of such person when his mental or emotional such condition is in issue before the Board of Medicine . Nothing herein is to be construed to make any~~ The recommendations of the Psychiatric Advisory Board Committee shall not be binding upon the Board of Medicine . Every member of the Psychiatric Advisory Board Practitioners shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his *their* duties as a ~~member members~~ of the Psychiatric Advisory Board Committee unless such ~~member they~~ acted

in bad faith or with malicious intent.

Drafting Note: There is no change in the law.

§ 54.1-2925. ~~§ 54-318.4.~~ Use of experts in disciplinary proceedings.—In any disciplinary proceeding conducted pursuant to §§ ~~54-318.1 and 54-318.3~~ *this chapter*, the executive director may contract with an expert or a panel of experts in the various specialties to provide assistance in investigating and evaluating practitioners who may be subject to punitive action. The executive director shall select experts for this purpose from lists of specialists to be provided and regularly updated by the appropriate professional societies. Any contract between the executive director and any consulting expert shall provide that the consulting expert shall: (i) be available to work with an investigator from the beginning of the investigation; (ii) receive appropriate compensation for his services; (iii) review and evaluate a completed investigation report in accordance with guidelines established by the Board and the Office of the Attorney General and return it to the Board for action within a specified period of time; and (iv) be available to testify for the Board in any administrative or court proceeding arising from the investigations in which he has participated.

Any expert assisting in any investigation voluntarily or under the contract arrangements described in this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless he acted in bad faith or with malicious intent.

Drafting Note: There is no change in the law.

§ 54.1-2926. ~~§ 54-318.2.~~ Powers of Board with respect to practitioners licensed to practice pharmacy.—The Board of Medicine shall have, with respect to practitioners of medicine, homeopathy, osteopathy, or podiatry, the same powers conferred upon the State Board of Pharmacy with respect to pharmacists, to revoke or suspend the license *to dispense drugs* issued under § ~~54-524.34~~ *54.1-3304* or to prescribe the medicines to be possessed or dispensed by such practitioner or to revoke the registration of such practitioner issued under § ~~54-524.47:1 or 54-524.47:2~~ *Chapter 34 of this title for the same causes prescribed in § 54-524.22:1 or 54-524.47:3*. The Board of Medicine shall promptly report any such action taken to the State Board of Pharmacy, and ~~such~~ *the* revoked license shall not be reissued nor shall ~~such~~ *the* person be registered anew, except upon recommendation of the Board of Medicine.

Drafting Note: There is no change in the law.

§ 54.1-2927. ~~§ 54-310.~~ Issuance of certificates to Applicants from other states *without reciprocity; temporary licenses for certain physicians ; reciprocal relations*. — The Board, in its discretion, may arrange for reciprocity with the authorities of the District of Columbia and other states and territories having requirements equal to those established by this chapter and the rules and regulations of the Board, and issue certificates to applicants who have met such requirements. The Board, in its discretion, may require physical therapist or physical therapist assistant candidates for licensure to meet professional activity requirements or serve a traineeship as set forth in its rules and regulations. A. The Board, in its discretion, may issue certificates *or licenses* to applicants upon endorsement by boards or other appropriate authorities of other states or territories or the District of Columbia with which reciprocal relations have not been established ; ~~provided~~ *if* the credentials of such applicants are satisfactory and the examinations and passing grades required by such other boards are fully equal to those required by the Virginia Board.

The Board may issue certificates *or licenses* to applicants holding certificates from the national boards of their respective branches of the healing arts ; ~~provided~~ *if* their credentials, schools of graduation and national board examinations and results are acceptable to the Board. The Board shall promulgate ~~rules and~~ regulations in order to carry out the provisions of this section.

B. The Board may issue a license valid for a period not to exceed three months to a physician licensed and in good standing with the applicable regulatory agency in the state, District of Columbia, or Canada where the physician resides when the physician is in Virginia temporarily to practice medicine in a summer camp or in conjunction with patients who are participating in recreational activities. Approval of the credentials of such physicians and the form of such licenses shall be governed by regulations promulgated by the Board. A fee not to exceed twenty-five dollars may be charged by the Board for the issuance of a license authorized by this subsection.

Drafting Note: Authority for reciprocity is granted in new § 54.1-103. The sentence relating to requirements for physical therapists and physical therapists assistants is included in § 54.1-2943. Subdivision B of § 54-276.5 is included here. There is no change in the law.

§ 54.1-2928. ~~§ 54-311.~~ Temporary certificates *or licenses* to *out-of-state* applicants ~~under § 54-310~~ .—The executive director of the Board may, upon recommendation of a Credentials

Committee established within the Board, issue temporary certificates or licenses to such out-of-state applicants as are entitled thereto under § 54-310 when the Board is not in session. Such temporary certificates or licenses shall be valid until the next regular session of the Board, at which session the holder thereof shall, in the discretion of the Board, or unless excused by the Board for cause, appear in person before the Credentials Committee and upon its approval be granted a certificate or license in due form.

Drafting Note: There is no change in the law.

§ 54-202.1. Employment of special investigators and other agents; compensation and expenses.—The Board may employ special investigators or other agents to make investigations, gather information and perform such other duties as the Board may deem necessary or appropriate to the effective enforcement or administration of the provisions of this chapter. The Board is authorized to fix the compensation of such investigators or agents and to pay such compensation and necessary expenses out of funds appropriated to the Board.

Drafting Note: Employment and investigation are covered in new §§ 54.1-2505 and 54.1-2506 (§§ 54-955 and 54-960). There is no change in the law.

§ 54-203. Records kept by Board; when admissible as evidence.—The Board shall preserve a record of its proceedings in a book kept for that purpose, which shall show the name, age, place and duration of residence therein of each applicant for a license, the time spent in study in professional schools, the year and school of graduation, and whether the applicant was granted a certificate or rejected. The record shall be prima facie evidence of all matters contained therein. Copies of such records, certified by the executive director of the Board, shall be admissible as evidence in all courts of this Commonwealth.

Drafting Note: Use of records as evidence is included in § 54.1-112. There is no change in the law.

§ 54-204. Disposition of funds. The funds realized from all fees collected by the Board shall be accounted for and shall be paid into the state treasury.

Drafting Note: Responsibility for funds and expenditures is included in § 54.1-2505 (§ 54-955).

§ 54-205. Expenses of Board. Each member of the Board shall receive reimbursement for all necessary expenses incurred in the performance of his duties. The expenses of the members and the necessary expenses of the Board shall be paid out of the state treasury upon the warrants of the Comptroller.

Drafting Note: Section 2.1-20.4 covers reimbursement.

§ 54-312. Duplicate certificates. Any legal practitioner who has lost a certificate granted by the Board may obtain a duplicate certificate by paying to the Board a fee, as prescribed by the rules and regulations of the Board, which duplicate certificate shall be registered as if it were an original.

Drafting Note: Language relating to obtaining copies is included in § 54.1-2904.

§ 54-315.3. Disposition of fees for renewals. All fees for renewal of certificates collected by the Board under the provisions of this article shall be paid into the state treasury, and all funds so deposited are hereby appropriated to the State Board of Medicine, for the administration and enforcement of the provisions of this article.

Drafting Note: Responsibility for funds and expenditures is included in § 54.1-2505 (formerly § 54-955). There is no change in the law.

§ 54-315.4. Penalty for violation.—Any person who shall violate any of the provisions of this article shall be punished by a fine of not less than twenty-five nor more than fifty dollars for each offense.

Drafting Note: Monetary penalties are provided in § 54.1-2401 (§ 54-961).

Article 3.

Licensure of Physicians of Medicine and Osteopathic Medicine, Chiropractors, Podiatrists and Clinical Psychologists.

§ 54.1-2929. Licenses required.—A. No person shall practice or hold himself out as qualified to practice medicine, osteopathy, chiropractic, podiatry or clinical psychology without obtaining a license from the Board of Medicine as provided in this chapter.

§ 54-281.3. Practice of clinical psychology by unlicensed person unlawful.—It shall be unlawful

for any person not licensed as such under this chapter to designate himself as a clinical psychologist, or use the words "clinical psychologist" in connection with his name or otherwise hold himself out as qualified to practice clinical psychology.

~~§ 54-281. Unlawful designation as podiatrist or foot specialist.~~—It shall be unlawful for any person to designate himself or his occupation by the use of any words or letters or trade diploma having a tendency to lead others to believe that he is a podiatrist or foot specialist unless he has been duly admitted to such practice as provided by law.

Drafting Note: There is no change in the law. This section consolidates §§ 54-281 and 54-281.3.

~~§ 54.1-2930. § 54-305.~~ Requirements for admission to examination.—The Board may admit to examination for licensure to practice medicine, osteopathy, chiropractic and podiatry any candidate who has submitted satisfactory evidence verified by affidavits that he:

1. Is eighteen years of age or more;
2. Is of good moral character;
3. Has successfully completed all or such part as may be prescribed by the Board, of an educational course of study of that branch of the healing arts in which he desires a license to practice, which course of study and the educational institution providing that course of study are acceptable to the Board; and
4. Has completed one year of satisfactory postgraduate training in a hospital in the United States or Canada approved by the Liaison Committee on Medical Education, or other official accrediting body recognized by the American Medical Association, American Osteopathic Association or the American Podiatry Association for internships or residency training. At the discretion of the Board, the postgraduate training may be waived if an applicant for licensure in podiatry has been in active practice for four continuous years while serving in the military and is a diplomate of the American Board of Podiatric Surgery. Applicants for licensure in chiropractic need not fulfill this requirement.

In determining whether such course of study and institution are acceptable to it, the Board may consider the reputation of the institution and whether it is approved or accredited by regional or national educational or professional associations including , but not limited to , such organizations as the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, by the Committee for the Accreditation of Canadian Medical Schools or their appropriate subsidiary agencies, by any appropriate agency of the United States government, or by any other organization. The Board may also consider any other factors that reflect whether that institution and its course of instruction provide training sufficient to prepare practitioners to practice their branch of the healing arts with competency and safety in the Commonwealth.

Drafting Note: There are no changes.

~~§ 54.1-2931. § 54-297.~~ Examinations; passing grade.—A. The examination of candidates for licensure to practice medicine and osteopathy, shall be in two parts consisting of Part I and Part II of the Federation Licensing Examination, known as FLEX. A grade of seventy-five shall be required on Part I and Part II for the candidate to pass the examination.

B. The examination of candidates for licensure to practice chiropractic shall be in three parts consisting of Part I and Part II of the National Board of Chiropractic Examiners and Part III as administered by the Board. A grade of seventy-five percent shall be required on Part I, Part II and Part III for the candidate to pass the examination.

C. The examination of candidates for licensure to practice podiatry shall be in three parts consisting of Part I and Part II of the National Board of Podiatry Examiners and Part III as administered by the Board. A grade of seventy-five percent shall be required on Part I, Part II and Part III for the candidates to pass the examination.

Drafting Note: There are no changes.

~~§ 54.1-2932. § 54-309.~~ Issuance of ~~certificates~~ licenses to practice.—Upon completion of satisfactory examinations under the rules of the Board ~~regulations~~ , applicants shall be granted ~~certificates~~ licenses to practice medicine, osteopathy, chiropractic ; , or podiatry ~~or physical therapy; as the case may be;~~ and each ~~certificate~~ license shall show plainly on its face the school or branch of the healing arts in which the holder thereof is permitted to practice ; and if a person is licensed as a ~~physical therapist assistant~~ the certificate shall show such fact plainly on its face . All ~~certificates~~ licenses shall be attested by the signature of the president and

secretary of the Board, respectively.

Drafting note: There is no change in the law. See § 54.1-2942 for the provisions relating to physical therapy.

§ 54.1-2933. ~~§ 54-306.1.1.~~ Licensure of certain persons who studied in foreign medical schools. — ~~Notwithstanding any other provision of law, the~~ The Board ; in its discretion, may license by examination, pursuant to §§ 54-297 through 54-305, an individual as a physician in this Commonwealth who has studied in a foreign medical school if the foreign medical school is acceptable to the Board and the individual has (i) qualified for and satisfactorily completed an appropriate supervised clinical training program as established by the American Medical Association; (ii) completed the postgraduate hospital training required by all applicants for licensure as defined in § 54-305 of this Code chapter ; and (iii) has presented a document granted by the foreign medical school certifying that all of the formal requirements of the school for a degree, except postgraduate internship and social services, have been met.

Drafting note: There is no change in the law.

§ 54.1-2934. ~~§ 54-306.2.~~ Evidence of right to practice required of certain foreign graduates.— Every candidate who is a graduate of a school of a country other than the United States and Canada must, in addition to meeting the other requirements of this article, exhibit to the Board a diploma, license or certificate conferring the full right to practice in that country, or ; in lieu thereof, satisfactory evidence showing that the candidate has completed the course of study and passed examinations equivalent to those required for a diploma or license conferring such full right to practice.

Drafting Note: There is no change in the law.

§ 54.1-2935. ~~§ 54-306.3.~~ Supplemental training or study required of certain graduates of schools of foreign countries.—No graduate of a school outside of the United States and Canada shall be admitted to any examination given by the Board until he has completed one year of satisfactory postgraduate training in a hospital in the United States or Canada approved by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association for internship or residency training. The Board may ; in its discretion, consider one year of teaching in an approved medical school in the United States or Canada as a substitute for the one year of required postgraduate training.

Drafting Note: There is no change in the law.

§ 54.1-2936. ~~§ 54-311.1.~~ Limited licenses to certain graduates of foreign medical schools.— Upon recommendation of the dean of an accredited school of medicine in this State after consultation with the heads of department of such school or college, the Board in its discretion and being satisfied that the applicant is a person of professorial rank whose knowledge and special training will benefit that medical school, may issue to an applicant graduated from a foreign medical school a limited license to practice medicine only in the hospital or hospitals and outpatient clinics connected with the school or college and only while he is a full-time member of the faculty teaching there. The license shall be valid for a period of not more than one year, expiring on the thirtieth day of June following its initial effective date, but may be renewed annually by the Board in accordance with the provisions of § 54-315.1 upon recommendation of the dean of the school of medicine where he teaches.

§ 54-311.2. Limited licenses to certain graduates of foreign medical schools; fellows. Upon recommendation of the dean of an accredited school of medicine in this State after consultation with the heads of the department of such school or college, the Board in its discretion and being satisfied that the applicant is a person whose attendance will be a benefit to the medical school, may issue to an applicant graduated from a foreign medical school a limited license to practice medicine as a fellow; such fellowship to be above the residency level, but below the rank of associate professor. Such license shall permit the holder thereof to practice medicine only while he is engaged full time in the fellowship and only in the hospital or hospitals and outpatient clinics connected with the school or college. The license shall be valid for a period of not more than one year, expiring on the thirtieth day of June following its initial effective date. The license may be renewed in accordance with the provisions of § 54-315.1 of the Code of Virginia upon the recommendation of the dean of the school. A license issued under this section may be renewed not more than twice.

A. After receiving a recommendation from the dean of an accredited medical school which was reached after consultation with the chairmen of the departments in the school or college and having become satisfied that the applicant is a person of professorial rank whose knowledge and special training will benefit the medical school, the Board may issue a limited license to practice medicine in the hospitals and outpatient clinics of the school or college to a graduate of a foreign medical school as long as he is employed as a full-time faculty member. This limited license shall be valid for a period of not more than one year, but may be renewed annually by

the Board upon recommendation of the dean of the medical school and continued employment as a full-time faculty member.

B. After receiving a recommendation from the dean of an accredited medical school which was reached after consultation with the chairmen of the departments in the school or college and having become satisfied that the applicant is a person whose attendance will benefit the medical school, the Board may issue a limited license to practice medicine as a fellow if such fellowship is ranked between the residency level and that of associate professor. This limited license shall only authorize the holder to practice medicine in the hospitals and outpatient clinics of the school while he is a full-time fellow. The license shall be valid for a period of not more than one year, but may be renewed upon recommendation of the dean of the medical school and continuation of the fellowship. A limited license to a foreign graduate engaged in a fellowship shall not be renewed more than twice.

Drafting Note: Sections 54-311.1 and 54-311.2 have been consolidated and revised here. There is no change in the law.

§ 54.1-2937. § 54-311.3. Temporary licenses to interns and residents in hospitals and other organizations.—Upon recommendation by the chief of an approved internship or residency program as defined in § 54-276.7 *this chapter*, the Board may issue a temporary annual license to practice medicine, ~~osteopathy~~ osteopathic medicine, podiatry or chiropractic to interns and residents in such programs. No such license shall be issued to an intern or resident who has not completed successfully the preliminary academic education required for admission to examinations given by the Board in his particular field of practice. Such license shall expire upon the holder's withdrawal or termination from the internship or residency program. The Board may prescribe such rules and regulations not in conflict with existing law and require such reports from hospitals or other organizations operating an approved graduate medical education program in the Commonwealth as may be necessary to carry out the provisions of this section.

Drafting Note: There is no change in the law.

§ 54.1-2938. § 54-279. Limitations on use of title "Doctor" or "Dr." by chiropractors.—Chiropractors ~~when~~ using the title "Doctor" or "Dr." in connection with their names shall also use the word "Chiropractor" or "D.C.;" ~~but the~~ . The title "Doctor" or "Dr." shall not be used alone by chiropractors .

Drafting Note: There is no change in the law.

§ 54.1-2939. § 54-275.2. Surgery by podiatrists on patients under general anesthesia limited.—Podiatrists shall not perform surgery on patients under a general anesthetic except in a hospital approved by the Joint Commission on Accreditation of Hospitals and shall perform such surgery only to the extent permitted by *this chapter and the rules and regulations* of such hospital.

Drafting Note: There is no change in the law.

§ 54.1-2940. § 54-300.1. License to practice clinical psychology.—Upon receipt of an application ~~for the issuance of a license to practice clinical psychology, together~~ with a recommendation from the Virginia Board of Psychologists Examiners *Psychology* that such license be issued, the Board shall, in the absence of good cause to the contrary, issue a license to the applicant. Any refusal to issue such license shall be accompanied by a statement in writing of the reason therefor.

Drafting Note: There is no change in the law.

§ 54.1-2941. § 54-275.1. Contracts of practitioners with approved colleges and certain state agencies not prohibited.— ~~Nothing in this~~ *This chapter shall not* be construed to prohibit, forbid or prevent (i) any approved school of medicine, osteopathy, podiatry or chiropractic from contracting with any ~~duly~~ licensed practitioner to teach or participate in a preceptorship program in such college on such terms of compensation as may be mutually satisfactory, which contract may prescribe the extent, if any, to which the practitioner may engage in private practice, or (ii) any institution, hospital, treatment center, sanatorium or other similar agency under the management and control of an agency of the Commonwealth from employing or contracting with any ~~duly~~ licensed practitioner to furnish professional services in the work of the agency, or to persons entitled to receive such care from the agency.

Drafting Note: There is no change in the law.

Article 4.

Licensure and Certification of Other

Practitioners of the Healing Arts.

~~§ 54.1-2942. § 54-281.1. Unlawful designation as physical therapist or physical therapist assistant .—It shall be unlawful for any person who is not licensed under this chapter, or whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed, to use in conjunction with his name the letters or words “R.P.T.,” “Registered Physical Therapist,” “L.P.T.,” “Licensed Physical Therapist,” “P.T.,” “Physical Therapist,” “Physio-therapist,” “P.T.T.,” “Physical Therapy Technician,” “P.T.A.,” “Physical Therapist Assistant,” “L.P.T.A.,” “Licensed Physical Therapist Assistant,” or to otherwise by letters, words, representations or insignias assert or imply that he is a registered physical therapist. The title to designate a physical therapist assistant shall be L.P.T.A. The license to practice as a physical therapist assistant shall show such fact plainly on its face.~~

Drafting Note: There are no changes. Subdivision (c) of § 54-308.6 is placed here.

~~§ 54.1-2943. § 54-281.2. Unlawful to practice physical therapy or physical therapist assistance except by referral and direction.—It shall be unlawful for a person to engage in the practice of physical therapy except as a licensed physical therapist, upon the referral and direction of a duly licensed doctor of medicine, osteopathy, chiropractic, podiatry or dental surgery.~~

~~Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist and the patient's physician.~~

~~The Board may promulgate regulations providing for the limited practice of physical therapy by a graduate physical therapist or physical therapist assistant enrolled in a traineeship program as defined by regulation of the Board under the direct supervision of a licensed physical therapist.~~

~~In granting licenses to out-of-state applicants, the Board may require physical therapists or physical therapist assistants to meet the professional activity requirements or serve traineeships according to its regulations.~~

Drafting Note: Subdivision (d) of § 54-308.6 has been placed here as well as language relating to physical therapy taken from §§ 54-274 and 54-310.

~~§ 54.1-2944. § 54-295.1. Advisory Committee on Physical Therapy continued as Advisory Board on Physical Therapy ; appointment; qualifications; etc .— The advisory committee to the State Board of Medicine known as the Advisory Committee on Physical Therapy, is continued and shall hereafter be known as the Advisory Board on Physical Therapy. The Advisory Board on physical therapy shall assist the Board of Medicine in carrying out the provisions of this chapter regarding the qualification, examination, licensure and regulation of physical therapists and physical therapist assistants.~~

~~§ 54-295.2. Same; appointment, qualification, terms and vacancies. —The Advisory Board shall be appointed by the Governor and shall be composed of five members , each of whom shall be a physical therapist who has practiced his profession for not less than three years prior to his appointment. For the purpose of appointments to this Advisory Board, the Commonwealth shall be divided into five physical therapy districts, and one Advisory Board member shall be appointed from each district. Each physical therapy district shall be composed of two congressional districts as follows: first and third, second and fourth, fifth and seventh, sixth and ninth, and eighth and tenth. Implementation of this system of appointment shall be made incrementally as each present term expires. Members shall be appointed for terms of five years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Board for more than two successive terms. If any Advisory Board member ceases to reside in the physical therapy district from which he was appointed, except by reason of redistricting, his office shall be deemed vacant.~~

~~§ 54-295.4. Oath of office.—Every person appointed to the Committee shall, before entering upon the performance of his duties, take the oath of his office.~~

~~§ 54-295.5. Limitation on service.—No person shall be eligible to serve on the Committee for more than two successive terms.~~

Drafting Note: This section consolidates §§ 54-295.1, 54-295.2, 54-295.4 and 54-295.5. Oaths are required by § 49-1. There is no change in the law.

~~§ 54.1-2945. § 54-295.3. Appointment from nominees of physical therapy associations Nominations .— The Governor Nominations for the members of the Advisory Board on Physical Therapy may select the members of the Committee be submitted to the Governor from a list of at least three names for each vacancy to be recommended by the Virginia Physical Therapy Association, Inc. ; such recommendation to be made by June one of the respective years . The Governor shall not be bound to make any appointments from among such nominees.~~

Drafting Note: All nomination sections are being conformed.

§ 54.1-2946. ~~§ 54-295.6.~~ Examinations given by Advisory Board; license issued or denied by Board; other duties of Advisory Board.—The Advisory Board shall, under the ~~direction and~~ authority of the Board, provide the examinations to be taken by applicants for licensure as physical therapists and physical therapists assistants, and administer and grade such examinations. The results of such examinations shall be certified by the Advisory Board to the Board ; ~~and the~~ . The Board shall, on the basis of such examinations, issue or deny licenses to applicants to practice physical therapy or perform the duties of a physical therapist assistant. Any ~~such~~ applicant who feels aggrieved at the result of his examination may appeal to the Board of Medicine .

The Advisory Board shall also assist the Board in matters pertaining to the ~~regulations~~ regulation of physical therapists and the practice of physical therapy, and in the evaluation of evidence submitted in support of applications for physical therapist and physical therapist assistant licenses through reciprocity or endorsement, and in all other matters pertaining to physical therapy as the Board may request.

Drafting Note: There is no change in the law.

§ 54.1-2947. ~~§ 54-308.5.~~ Requirements for admission to examination on physical therapy.—Examinations of applicants to practice physical therapy shall be in three parts. Each candidate must submit evidence, verified by affidavit and satisfactory to the Board, that he or she :

~~(a)~~ [Repealed.]

~~(b)~~ 1. Is eighteen years of age or more;

~~(c)~~ 2. Is of good moral character;

~~(d)~~ [Repealed.]

~~(e)~~ 3. Is a graduate of a school of physical therapy approved by the Council on Medical Education and Hospitals of the American Medical Association or by the American Physical Therapy Association, or is a graduate of a school outside of the United States or Canada which offers and requires courses in physical therapy acceptable to the Board on the advice of the Committee.

Drafting Note: There is no change in the law.

§ 54.1-2948. ~~§ 54-308.6.~~ Physical therapist assistants.— ~~(a)~~ Examinations of applicants to practice as physical therapist assistants shall be in one part and shall include subjects as may be set forth by the American Physical Therapy Association. Each candidate must submit evidence, verified by affidavit and satisfactory to the Board, that he or she :

~~(1)~~ [Repealed.]

~~(2)~~ 1. Is eighteen years of age or more;

~~(3)~~ 2. Is of good moral character;

~~(4)~~ [Repealed.]

~~(5)~~ 3. Is a graduate of a two-year college-level education program for physical therapist assistants approved by the Board.

~~(b)~~ [Repealed.]

~~(c)~~ The title to designate a physical therapist assistant shall be L.P.T.A.

~~(d)~~ Any person licensed as a physical therapist assistant shall perform his duties only under the direction and control of a licensed physical therapist and the patient's physician.

~~(e)~~ Examinations of applicants shall be taken in the same manner as examinations for applicants for licensure as physical therapists.

§ 54-308.7. Examinations of physical therapists.—The Board shall ~~prescribed~~ prescribed rules and regulations governing the content, administration and grading of examinations in the area of physical therapy.

Drafting note: There is no change in the law. Subdivisions (c) and (d) of § 54-308.6 have been transferred to new § 54.1-2942 and § 54.1-2943 respectively.

§ 54.1-2949. License required.—It shall be unlawful for a person to practice or to hold himself out as practicing as a physician's or podiatrist's assistant unless he holds a license as such issued by the Board.

Drafting note: This new section clarifies the requirement for a license.

§ 54.1-2950. § 54-281.7. Same; Requisite training and educational achievements of assistants.—The Board shall establish a testing program to determine the training and educational achievements of the assistant or where the Board deems it appropriate it may accept other evidence, such as experience or completion of an approved training program, in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

Pending the outcome of the next examination administered by the National Commission for Certification of Physicians' Assistants, the Board may grant provisional registration licensure to graduates of physicians' or podiatrists' assistants curricula which are approved by the Committee on Allied Health Education and Accreditation of the American Medical Association or the Committee on Education of the American Podiatry Association. Such provisional registration licensure shall be granted at the discretion of the Board.

Drafting note: There is no change in the law.

§ 54.1-2951. § 54-281.6. Same; Application to supervise assistants.—The Board shall formulate guidelines for the consideration of applications to supervise and employ assistants. Each application shall include the following:

(1) 1. The qualifications, including related experience, possessed by the assistant;

(2) 2. The professional background and speciality of the licensee who will supervise the assistant;

(3) 3. A description of the practice and the way in which the assistant is to be utilized.

Drafting Note: There are no changes.

§ 54.1-2952. § 54-281.4. Supervision of assistants by licensed physician, osteopath or podiatrist; services that may be performed by assistants; responsibility of licensee; employment of assistants. — (a) A. A medical physician, an osteopath or a podiatrist licensed under this chapter may make application apply to the Board to supervise assistants and delegate certain acts which constitute the practice of medicine to the extent and in the manner authorized by regulations which may be promulgated by the Board.

No licensee shall be allowed to supervise more than two assistants at any one time. However, a licensee, in the performance of his duties with the Department of Corrections, may supervise more than two assistants under the terms and conditions of supervision and control prescribed by the Board.

Any professional corporation or partnership of any licensee, any hospital and any commercial enterprise having medical facilities for its employees which are supervised by one or more physicians, or podiatrists may employ one or more assistants in accordance with the provisions of this section.

Such acts Activities shall be delegated in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind. Such services shall be limited to those which are educational, diagnostic, therapeutic or preventive in nature, but in no case shall they not include the establishment of a final diagnosis or treatment plan for the patient; nor shall delegated acts include or the prescribing or dispensing of drugs. Any professional corporation or partnership of any licensee, any hospital and any commercial enterprise having medical facilities for its employees supervised by one or more such licensees may employ one or more assistants in accordance with the provisions of this subsection.

(b) B. No assistant shall perform any delegated acts delegated hereunder except at the direction of the licensee and under his supervision and control. Every licensee, professional corporation or partnership of licensees, hospital or commercial enterprise that employs an assistant pursuant to subsection (a) above shall be fully responsible for the acts of the assistant in the care and treatment of human beings.

(c) C. Notwithstanding the provision of any other Code section to the contrary, and in order to insure ensure adequate and proper medical treatment to inmates of Virginia correctional institutions and facilities, the Board shall have the authority to promulgate rules and regulations permitting the employment of such assistants by the Virginia Department of Corrections under such conditions of supervision by licensed physicians employed by the

Department of Corrections as the Board in its discretion may approve .

Drafting note: This section consolidates §§ 54-281.4 and 54-281.5. Although the language is revised, there is no change in the law.

~~§ 54-281.5. Same; limit on number of assistants employed. No licensee shall be allowed to supervise more than two such assistants at any one time; however, in order to insure adequate and proper medical treatment for inmates within correctional institutions and facilities licensees employed by the Department of Corrections may supervise more than two assistants under such terms and conditions of supervision and control as the Board may, in its discretion, approve.~~

Drafting note: Section 54.1-2952 incorporates the substance of this section.

~~§ 54.1-2953. § 54-281.8. Same; expiration of approval; new application *Renewal, revocation, suspension and refusal* .—The approval of the Board for the employment of an assistant shall expire at the end of one year. A new application shall be submitted for approval, supplying such information as the Board may require, at the time and in the manner prescribed by the Board.~~

~~§ 54-281.9. Same; revocation, suspension or refusal to renew approval; §§ 54-281.4 through 54-281.9 inapplicable to nurses and pharmacists. The Board may revoke, suspend or refuse to renew an approval for any of the following:~~

~~(1) For any 1. any reason stated in this chapter for revocation or suspension of the license of a practitioner licensed under this chapter ;~~

~~(2) 2. Failure of the supervising licensee to supervise the assistant or failure of the employer to provide a licensee to supervise the assistant;~~

~~(3) 3. The assistant assistant's engaging in acts beyond the scope of authority to act as approved by the Board;~~

~~(4) 4. Negligence or incompetence on the part of the assistant or the supervising licensee in his use of the assistant;~~

~~(5) 5. Violating or cooperating with others in violating any provision of this chapter or the lawful regulations of the Board; or~~

~~(6) 6. A change in the Board's requirements for approval with which the assistant or the licensee does not comply.~~

~~The provisions of §§ 54-281.4 through 54-281.9 shall not be construed to apply to persons licensed as nurses or pharmacists.~~

Drafting note: This section consolidates §§ 54-281.8 and 54-281.9. There is no change in the law.

~~§ 54.1-2954. § 54-281.10. Certified respiratory therapy practitioner; definition.—“Certified respiratory therapy practitioner” means a person who has passed the certification examination for the entry level practice of respiratory therapy administered by the National Board for Respiratory Care, Inc., or other examination approved by the Board, who has complied with such rules and the regulations pertaining to certification as shall be prescribed by the Board, and who has been issued a certificate by the Board.~~

Drafting Note: There is no change in the law.

~~§ 54.1-2955. § 54-281.11. Unlawful designation as Certified Respiratory Therapy Practitioner.—It shall be unlawful for any person who is not certified under this chapter, or whose certification has been suspended or revoked, or whose certification has lapsed and has not been renewed, to use in conjunction with his name the letters or words “Certified Respiratory Therapy Practitioner,” “C.R.T.P.,” or to otherwise by letters, words, representations or insignias assert or imply that he is a certified respiratory therapy practitioner.~~

Drafting Note: There is no change in the law.

~~§ 54.1-2956. § 54-281.12. Advisory Committee on Respiratory Therapy; appointment; terms, etc. — There is hereby created an advisory committee to the State Board of Medicine, to be known as the Advisory Committee on Respiratory Therapy. The Advisory Committee on Respiratory Therapy shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, registration and regulation of certified respiratory therapy practitioners.~~

~~§ 54-281.13. Same; appointment, qualification, terms, vacancies, limitations and oath of office. The Committee shall be appointed by the State Board of Medicine and shall be composed of six~~

members. Five members shall serve terms of four years each; one of the five shall be an at-large board-certified pulmonary internist or anesthesiologist and four shall be certified respiratory therapy practitioners who have been certified in the Commonwealth for not less than three years prior to their appointments. The sixth member shall be a member of the State Board of Medicine and shall serve at the pleasure of the President.

Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Committee for more than two consecutive terms. ~~Every person appointed to the Committee, before entering upon the performance of his duties, shall take the oath of his office.~~

Drafting note: This section consolidates §§ 54-281.12 and 54-281.13. There is no change in the law. Oaths are required by § 49-1.

§ 54.1-2957. Licensure of nurse practitioners.—The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in this Commonwealth unless he holds such a joint license.

The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in this Commonwealth.

Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

Drafting note: This new section consolidates and clarifies the Board of Medicine's responsibility for certification of nurse practitioners. Parts of § 54-274 are included here.

Article 5.

Approval of Educational Programs.

§ 54.1-2958. § 54-306.1:2. Procedure for determining acceptability of foreign courses of study and educational institutions.—The Board may promulgate regulations and guidelines for determining the acceptability of courses of study and educational institutions in foreign countries. These regulations and guidelines shall include time limitations within which approval shall be granted or denied and for reapplication in cases of denial of approval, as well as notice of deficiencies in need of remediation, and a procedure for applying for renewal of approval.

The proceedings for approval shall be conducted pursuant to the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The Board shall assess any institution electing formal proceedings under § 9-6.14:12 the cost of such proceedings. These costs shall be limited to (i) the actual cost of recording the proceedings, including the preparation of a transcript, and (ii) the costs of the site visit committee, if deemed necessary by the Board, and preparation of the committee's testimony.

Drafting Note: There is no change in the law.

§ 54.1-2959. § 54-276.7:2. Supervised training programs; students enrolled in schools of medicine allowed to engage in certain activities.—Students enrolled in schools of medicine may (i) participate in preceptorship programs which are a part of the training program of the medical school; or (ii) practice in clinics, hospitals, educational institutions, private medical offices or other health facilities, in a program approved by the school, under the direct tutorial supervision of a licensed physician who holds an appointment on the faculty of a school of medicine approved by the Board.

Drafting Note: There is no change in the law.

§ 54-2960. § 54-276.7:1. Medical students in hospitals.—Subject to such restrictions as the Board, in consultation with the deans of the medical schools of this State Commonwealth, may prescribe by regulation, third and fourth year medical students engaged in a course of study approved by the Board may be employed by legally established and licensed hospitals to prepare medical history information and perform physical examinations where such practice is confined strictly to persons who are bona fide patients within the hospital or who receive treatment and advice in an organized outpatient department of the hospital to which ambulant patients regularly come for professional services rendered under supervision of licensed members of the hospital staff. Such students shall be responsible and accountable at all times to a licensed physician member of the hospital staff. ~~Nothing in this~~ This section shall not have the effect of removing the responsibility of the attending physician to assure that a licensed physician shall do a history and physical examination on each hospitalized patient.

Drafting Note: There is no change in the law.

§ 54.1-2961. § 54-276.7. Interns and residents in hospitals.—Interns and residents holding temporary licenses may be employed in a legally established and licensed hospital or other organization operating an approved graduate medical education program when their practice is confined to persons who are bona fide patients within the hospital or other organization or who receive treatment and advice in an organized outpatient department of the hospital to which ambulant patients regularly come for professional services rendered under supervision of licensed members of the hospital staff .

Such intern or resident shall be responsible and accountable at all times to a licensed member of the staff. No intern or resident holding a temporary license may be employed by any hospital or other organization operating an approved graduate medical education program unless he has completed successfully the preliminary academic education required for admission to examinations given by the Board in his particular field of practice.

No intern or resident holding a temporary license shall serve in any hospital or other organization operating an approved graduate medical education program in this Commonwealth after a period of six consecutive years has have elapsed from the date on which his services as intern or resident first commenced in the Commonwealth. The Board may prescribe such rules and regulations not in conflict with existing law and require such reports from hospitals or other organizations in the Commonwealth as may be necessary to carry out the provisions of this section.

Such employment shall be a part of an internship or residency training program approved by the Liaison Council on Graduate Education of the American Medical Association or American Osteopathic Association, American Podiatric Medical Association or Council on Chiropractic Education. No unlicensed intern or resident may be employed as an intern or resident by any hospital or other organization operating an approved graduate medical education program. The Board may determine the extent and scope of the duties and professional services which may be rendered by interns and residents.

Drafting Note: There is no change in the law.

Article 6.

General Standards of Practice.

§ 54.1-2962. § 54-278. Division of fees between physicians and surgeons prohibited.—No surgeon or physician shall directly or indirectly share any fee charged for a surgical operation or medical services with a physician who brings, sends or recommends a patient to such surgeon for operation, or such physician for such medical services; and no physician who brings, sends, or recommends any patient to a surgeon for a surgical operation or medical services shall accept from such surgeon or physician any portion of a fee charged for such operation ; provided, however, that nothing in this or medical services. This chapter shall not be construed as prohibiting the members of any regularly organized partnership of such surgeons or physicians from making any division of their total fees among themselves as they may determine or a group of duly licensed practitioners of any branch or branches of the healing arts from using their joint fees to defray their joint operating costs. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor.

Drafting Note: There is no change in the law.

§ 54.1-2963. § 54-278.2. Selling vitamins or food supplements in connection with a practice of the healing arts.—The Board shall have authority to promulgate rules and regulations regulating the sale of vitamins or food supplements by any practitioner of the healing arts from the office in which he practices.

Drafting Note: There is no change in the law.

§ 54.1-2964. § 54-278.3. Disclosure of interest in referral facilities.—Any practitioner of the healing arts shall, prior to referral of a patient to any facility or entity engaged in the provision of health-related services, appliances or devices, including but not limited to physical therapy, hearing testing, or sale or fitting of hearing aids or eyeglasses, disclose to the patient any financial interest of or ownership by the practitioner in such facility or entity. In making any such referral, the practitioner of the healing arts may render such recommendations as he considers appropriate, but shall advise the patient of his freedom of choice in the selection of such facility or entity. Nothing in this This section shall not be construed to permit any of the practices prohibited in subdivision (12) of § 54-317 § 54.1-2723 . Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Drafting Note: There is no change in the law.

§ 54.1-2965. § 54-274.1. Regulations governing practice of acupuncture.—The Board shall promulgate rules and regulations ; not inconsistent with the laws of this State, governing the practice of acupuncture. In the formulation of such rules and regulations, the Board shall recognize that the practice of this modality requires the exercise of professional judgment, and may give consideration to such timely information and suggestions as may be provided by the national and state associations representing branches of the healing arts, by the National Institutes of Health and by the medical institutions in this State Commonwealth at which research is being conducted with respect to acupuncture. ~~Nothing contained in this~~ This section shall not have the effect of restricting the practice of acupuncture to medical institutions or hospitals at which research is being performed with respect to acupuncture.

Drafting Note: There is no change in the law.

§ 54.1-2966. § 54-276.9-1. Physicians reporting disabilities to aircraft pilots licensing authorities exempt from liability; testifying in certain proceedings.—A. Any physician who, in good faith, reports the existence, or probable existence, of a mental or physical disability or infirmity in any person licensed or certificated to operate any type of aircraft, or who has applied any applicant for a license or certificate to operate any type of aircraft, to a governmental agency which is responsible for issuing, renewing, revoking or suspending such licenses or certificates, or which is responsible for air safety, which such the physician believes will or reasonably could affect such person's ability to safely operate the aircraft he is licensed or certificated, or is seeking to be licensed or certificated, to operate shall not be liable for any civil damages resulting from such reporting, regardless of whether such person is, or has been, a patient of such physician, except when such reporting was done with malice.

B. Notwithstanding any provision of § 8.01-399, any physician may testify in any administrative hearing or other proceeding regarding the issuance, renewal, revocation or suspension of any license or certificate to pilot an aircraft of any person, regardless of whether such person is, or has been, a patient of such physician, giving evidence of the existence or probable existence, of a mental or physical disability or infirmity.

Drafting Note: There is no change in the law.

§ 54.1-2967. § 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 and 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 . 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.

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.

Drafting Note: There is no change in the law.

§ 54.1-2968. § 54-276.11. Physicians may give information Information about certain handicapped persons to appropriate public agencies — Nothing in this This chapter or any other law of Virginia shall not be construed to prohibit any duly licensed physician from communicating the identity of any person under age twenty-two who has a physical or mental handicapping condition to appropriate agencies of the Commonwealth or any of its political subdivisions and other information regarding such person or condition which may be helpful to the agency in the planning or conduct of services for handicapped persons.

Drafting Note: There is no change in the law.

§ 54.1-2969. § 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, (ii) minors who are taken into custody pursuant to § 63.1-248.9 of the Code and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or his designees 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~~ . *However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent must shall be obtained 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 sexual sterilization;

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 sexual sterilization, 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~~ *However,* 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.

G. Any judge, local superintendent of public welfare or social services, Director of the Department of Corrections, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

Drafting note: There is no change in the law.

~~§ 54.1-2970. § 54-325.2-1.~~ Medical treatment for certain persons incompetent to give *informed* consent.— ~~No~~ *When a delay in treatment might adversely affect recovery,* a licensed health professional or licensed hospital shall *not be subject to liability arising out of a claim based on*

lack of informed consent or be prohibited from providing surgical or medical treatment to an individual who is a patient or resident of a hospital or facility operated by the Department of Mental Health and , Mental Retardation and Substance Abuse Services and who is incompetent to give informed consent to the treatment by reason of mental illness or mental retardation when a delay in treatment might adversely affect recovery and such professional or hospital shall have no liability arising out of a claim based on lack of consent to such treatment provided that under the following conditions :

- (1) 1. No legally authorized guardian or committee was available to give consent;
- (2) 2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical or medical treatment;
- (3) 3. No reasonable objection is raised by the alleged incompetent; and
- (4) 4. Two physicians state in writing that they have made a good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is incompetent to consent to the treatment by reason of mental illness or mental retardation and that delay in treatment might adversely affect recovery.

The provisions of this section shall apply only to the treatment of physical injury or illness and not to any treatment for mental, emotional or psychological condition.
Drafting Note: There is no change in the law.

§ 54.1-2971. § 54-325.2:2. Informed consent for treatment of breast tumor; paragraphs required in form.—Before a physician operates on a patient for a tumor of the breast, a consent form shall have been executed which includes the following:

‘‘CONSENT FOR TREATMENT OF BREAST TUMOR’’

Sign option (a) or option (b), or option (a) and option (b)

(a) I authorize Dr. to perform a
Breast Biopsy.....
side (right and/ or left)
.....
Patient’s or other authorized person’s Signature

(b) If it is determined that I have a malignant tumor in my breast or other breast abnormality requiring surgery, then I authorize Dr..... to perform such operations or procedures, including breast removal, which are deemed necessary.

Procedure:
.....
.....
Patient’s or other authorized person’s Signature

Drafting Note: There are no changes.

§ 54.1-2972. § 54-325.7. When person deemed medically and legally dead.—A person shall be medically and legally dead if:

1. 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

2. 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 another physician and such neurospecialist, 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 subdivision 2 hereof, shall be pronounced by one of the two physicians and recorded in the patient’s medical record and attested by the other physician. One of two

physicians pronouncing or attesting to brain death may be the attending physician regardless of his specialty so long as at least one of the physicians is a neurospecialist.

~~Notwithstanding any statutory or common law to the contrary, either~~ *Either* of these alternative definitions of death may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

Drafting Note: There is no change in the law. The added sentence is intended to clarify the brain death requirements.

~~§ 54.1-2973. § 54-325.8.~~ Persons who may authorize postmortem examination of decedent's body.—Any of the following persons, 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, if: (i) no person in a higher class exists or no person in a higher class is available at the time authorization or consent is given, (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 before death.

In cases of death where official inquiry is authorized or required by law, the provisions of Article 1 (§ 32.1-277 et seq.) of Chapter 8 of Title 32.1 shall apply. If at the time of death, a postmortem examination is authorized or required by law, any prior authorization or consent pursuant to this section shall not be valid unless the body is released by the Chief Medical Examiner or one of his assistants.

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.

Drafting Note: There is no change in the law.

Article 6.

Sexual Sterilization.

~~§ 54.1-2974. § 54-325.9.~~ Sterilization operations for persons eighteen years or older capable of informed consent.—It shall be lawful for any physician licensed by the State Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on any person eighteen years of age or older, who has the capacity to give informed consent, when so requested in writing by such person. Prior to or at the time of such request, a full, reasonable, and comprehensible medical explanation as to the meaning and consequences of such an operation and as to alternative methods of contraception shall be given by the physician to the person requesting the operation. No such operation shall be performed prior to thirty days from the date of the written request therefor upon a person who has not previously become the natural or adoptive parent of a child.

Drafting Note: There are no changes.

~~54.1-2975. § 54-325.10.~~ Sterilization operations for certain children incapable of informed consent.—It shall be lawful for any physician licensed by the State Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on a person fourteen years of age or older and less than eighteen years of age when:

1. A petition has been filed in the circuit court of the county or city wherein the child resides by the parent or parents having custody of the child or by the child's guardian, spouse, or next friend requesting that the operation be performed;

2. The court has made the child a party defendant, served the child, the child's guardian, if any, the child's spouse, if any, and the child's parent who has custody of the child with notice of the proceedings and appointed for the child an attorney-at-law to represent and protect the child's interests;

3. The court has determined that a full, reasonable, and comprehensible medical explanation as to the meaning, consequences, and risks of the sterilization operation to be performed and as to alternative methods of contraception has been given by the physician to the child upon whom the operation is to be performed, to the child's guardian, if any, to the child's spouse, if any, and, if there is no spouse, to the parent who has custody of the child;

4. The court has determined by clear and convincing evidence that the child's mental abilities are so impaired that the child is incapable of making his or her own decision about sterilization and is unlikely to develop mentally to a sufficient degree to make an informed judgment about sterilization in the foreseeable future;

5. The court, to the greatest extent possible, has elicited and taken into account the views of the child concerning the sterilization, giving the views of the child such weight in its decision as the court deems appropriate;

6. The court has complied with the requirements of ~~§ 54-325.12~~ § 54.1-2977 ; and

7. The court has entered an order authorizing a qualified physician to perform the operation not earlier than thirty days after the date of the entry of the order, and thirty days have elapsed. The court order shall state the date on and after which the sterilization operation may be performed.

Drafting Note: There are no changes.

~~§ 54.1-2976. § 54-325.11.~~ Sterilization operations for certain adults incapable of informed consent.—It shall be lawful for any physician licensed by the State Board of Medicine to perform a vasectomy, salpingectomy, or other surgical sexual sterilization procedure on a person eighteen years of age or older, who does not have the capacity to give informed consent to such an operation, when:

1. A petition has been filed in the circuit court of the county or city wherein the person resides by the person's parent or parents, guardian, committee, spouse, or next friend requesting that the operation be performed;

2. The court has made the person a party defendant, served the person, the person's guardian, if any, the person's spouse, if any, and if there is no spouse, the person's parent with notice of the proceedings and appointed for the person an attorney-at-law to represent and protect the person's interests;

3. The court has determined that a full, reasonable, and comprehensible medical explanation as to the meaning, consequences, and risks of the sterilization operation to be performed and as to alternative methods of contraception has been given by the physician to the person upon whom the operation is to be performed, to the person's guardian, if any, to the person's spouse, if any, and, if there is no spouse, to the parent;

4. The court has determined (i) that the person has been adjudicated incompetent in accordance with § 37.1-128.02, has previously been adjudicated incapacitated for the purposes of consenting to a sterilization operation in accordance with § 37.1-128.1 or has been adjudicated in the proceeding specified in this section to be incapacitated for the purposes of consenting to a sterilization operation in accordance with § 37.1-128.1, and (ii) that the person is unlikely to develop mentally to a sufficient degree to make an informed judgment about sterilization in the foreseeable future;

5. The court, to the greatest extent possible, has elicited and taken into account the views of the person concerning the sterilization, giving the views of the person such weight in its decision as the court deems appropriate;

6. The court has complied with the requirements of ~~§ 54-325.12~~ § 54.1-2977 ; and

7. The court has entered an order authorizing a qualified physician to perform the operation not earlier than thirty days after the date of the entry of the order, and thirty days have elapsed. The court order shall state the date on and after which the sterilization operation may be performed.

Drafting Note: There are no changes.

§ 54.1-2977. ~~§ 54-325.12.~~ Standards for court-authorized sterilization of certain persons.—A. In order for the circuit court to authorize the sterilization of a person in accordance with ~~§ 54-325.10~~ or ~~§ 54-325.11~~ § 54.1-2975 or § 54.1-2976 , it must be proven by clear and convincing evidence that:

1. There is a need for contraception. The court shall find that the person is engaging in sexual activity at the present time or is likely to engage in sexual activity in the near future and that pregnancy would not usually be intended by such person if such person were competent and engaging in sexual activity under similar circumstances;

2. There is no reasonable alternative method of contraception to sterilization;

3. The proposed method of sterilization conforms with standard medical practice, and the treatment can be carried out without unreasonable risk to the life and health of the person; and

4. The nature and extent of the person's mental disability renders the person permanently incapable of caring for and raising a child. The court shall base this finding on empirical evidence and not solely on standardized tests.

B. The criteria set out in subsection A of this section shall be established for the court by independent evidence based on a medical, social, and psychological evaluation of the person upon whom the sterilization operation is to be performed.

Drafting Note: There are no changes.

~~§ 54.1-2978. § 54-325.13. Reports of certain sterilizations.—The court shall report to the State Registrar of Vital Records and Health Statistics appointed in accordance with Chapter 7 of Title 32.1 (§ 32.1-249 et seq.) the authorization of all sterilizations made in accordance with §§ 54-325.10 and 54-325.11 this article .~~

Drafting Note: There is no change in the law.

~~§ 54.1-2979. § 54-325.14. No liability for nonnegligent performance of operation.—Subject to the rules of law applicable generally to negligence, no physician licensed by the State Board of Medicine shall be either civilly or criminally liable by reason of having performed a vasectomy, salpingectomy, or other surgical sexual sterilization procedure upon any person in this Commonwealth as authorized by §§ 54-325.9 through 54-325.11 this article .~~

Drafting Note: There is no change in the law.

~~§ 54.1-2980. § 54-325.15. Article inapplicable to certain medical or surgical treatment.—No provision in this article 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 licensed by the State Board of Medicine, 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.~~

Drafting Note: There is no change in the law.

Article 7.

Natural Death Act.

~~§ 54.1-2981. § 54-325.8:1. Policy statement; short title.—The General Assembly finds that all competent adults have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, withheld or withdrawn.~~

~~The General Assembly further finds that the artificial prolongation of life for persons with a terminal condition may cause loss of individual dignity and secure only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the patient.~~

~~In order that the dignity, privacy and sanctity of persons with such conditions may be respected even after they are no longer able to participate actively in decisions concerning themselves, the General Assembly hereby declares that the laws of the Commonwealth of Virginia shall recognize the right of a competent adult to make an oral or written declaration instructing his physician to withhold or withdraw life-prolonging procedures or to designate another to make the treatment decision for him, in the event such person is diagnosed as suffering from a terminal condition.~~

~~The provisions of this article shall be known and may be cited as the "Natural Death Act of Virginia."~~

~~Drafting Note: The statement of legislative intent has been deleted.~~

~~§ 54.1-2982. § 54-325.8:2. Definitions.—As used in this article:~~

“Attending physician” means the primary physician who has responsibility for the treatment and care of the patient.

“Declaration” means (i) a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of ~~§ 54-325.8:3~~ § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of ~~§ 54-325.8:3~~ § 54.1-2983 .

“Life-prolonging procedure” means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process; however, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

“Physician” means a person licensed to practice medicine in the Commonwealth of Virginia.

“Qualified patient” means a patient who has (i) made a declaration in accordance with this article and (ii) been diagnosed and certified in writing by the attending physician, (and, in any case where the patient is comatose, incompetent or otherwise physically or mentally incapable of communication, by one other physician who has examined the patient) to be afflicted with a terminal condition.

“Terminal condition” means a condition caused by injury, disease or illness from which, to a reasonable degree of medical certainty, (i) there can be no recovery and (ii) death is imminent.

“Witness” means a person who is not a spouse or blood relative of the patient.

Drafting Note: There are no changes.

§ 54.1-2983. ~~§ 54-325.8:3.~~ Procedure for making declaration; notice to physician.—Any competent adult may, at any time, make a written declaration directing the withholding or withdrawal of life-prolonging procedures in the event such person should have a terminal condition. A written declaration shall be signed by the declarant in the presence of two subscribing witnesses. An oral declaration may be made by a competent adult in the presence of a physician and two witnesses by any nonwritten means of communication at any time subsequent to the diagnosis of a terminal condition.

It shall be the responsibility of the declarant to provide for notification to his attending physician that a declaration has been made. In the event the declarant is comatose, incompetent or otherwise mentally or physically incapable, any other person may notify the physician of the existence of a declaration. An attending physician who is so notified shall promptly make the declaration or a copy of the declaration, if written, a part of the declarant’s medical records. If the declaration is oral, the physician shall likewise promptly make the fact of such declaration a part of the patient’s medical record.

Drafting Note: There are no changes.

§ 54.1-2984. ~~§ 54-325.8:4.~~ Suggested form of written declaration.—A declaration executed pursuant to this article may, but need not, be in the following form, and may include other specific directions including, but not limited to, a designation of another person to make the treatment decision for the declarant should he be (i) diagnosed as suffering from a terminal condition and (ii) comatose, incompetent or otherwise mentally or physically incapable of communication. Should any other specific directions be held to be invalid, such invalidity shall not affect the declaration.

Declaration made this.....day of..... (month, year). I,....., willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

If at any time I should have a terminal condition and my attending physician has determined that there can be no recovery from such condition and my death is imminent, where the application of life-prolonging procedures would serve only to artificially prolong withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this declaration shall be honored by my family and physician

as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

.....
(Signed)

The declarant is known to me and I believe him or her to be of sound mind.

.....
Witness

.....
Witness

Drafting Note: There are no changes.

§ 54.1-2985. ~~§ 54-325.8:5.~~ Revocation of declaration.—A declaration may be revoked at any time by the declarant (i) by a signed, dated writing; or (ii) by physical cancellation or destruction of the declaration by the declarant or another in his presence and at his direction; or (iii) by an oral expression of intent to revoke. Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

Drafting Note: There are no changes.

§ 54.1-2986. ~~§ 54-325.8:6.~~ Procedure in absence of declaration; no presumption.—Life-prolonging procedures may be withheld or withdrawn from an adult patient with a terminal condition who (i) is comatose, incompetent or otherwise physically or mentally incapable of communication and (ii) has not made a declaration in accordance with this article, provided there is consultation and agreement for the withholding or the withdrawal of life-prolonging procedures between the attending physician and any of the following individuals, in the following order of priority if no individual in a prior class is reasonably available, willing and competent to act:

1. The judicially appointed guardian or committee of the person of the patient if one has been appointed. This paragraph shall not be construed to require such appointment in order that a treatment decision can be made under this section;
2. The person or persons designated by the patient in writing to make the treatment decision for him should he be diagnosed as suffering from a terminal condition; or
3. The patient's spouse; or
4. An adult child of the patient or, if the patient has more than one adult child, by a majority of the children who are reasonably available for consultation; or
5. The parents of the patient; or
6. The nearest living relative of the patient.

In any case where the treatment decision is made by a person specified in paragraph 3, 4, 5 or 6, there shall be at least two witnesses present at the time of the consultation when the treatment decision is made, and life-prolonging procedures shall not be withdrawn or withheld pursuant to paragraph 3, 4, 5 or 6 herein without the consent of at least two of those persons set forth in such paragraphs, provided they are reasonably available.

The absence of a declaration by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse life-prolonging procedures.

Drafting Note: There are no changes.

§ 54.1-2987. ~~§ 54-325.8:7.~~ Transfer of patient by physician who refuses to comply with declaration or treatment decision.—An attending physician who refuses to comply with the declaration of a qualified patient or the treatment decision of a person designated to make the decision (i) by the declarant in his declaration or (ii) pursuant to ~~§ 54-325.8:6~~ § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician.

Drafting Note: There are no changes.

§ 54.1-2988. ~~§ 54-325.8:8.~~ Immunity from liability; burden of proof; presumption.—A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional

conduct as a result of the withholding or the withdrawal of life-prolonging procedures from a patient with a terminal condition in accordance with this article. A person who authorizes the withholding or withdrawal of life-prolonging procedures from a patient with a terminal condition in accordance with a qualified patient's declaration or as provided in ~~§ 54-325.8:6~~ § 54.1-2986 shall not be subject to criminal prosecution or civil liability for such action.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the withholding or withdrawal of life-prolonging procedures did not, in good faith, comply with the provisions of this article. A declaration made in accordance with this article shall be presumed to have been made voluntarily.

Drafting Note: There are no changes.

~~§ 54.1-2989. § 54-325.8:9.~~ Willful destruction, concealment, etc., of declaration or revocation; penalties.—Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another, thereby causing life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient shall be guilty of a Class 6 felony.

Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony.

Drafting Note: There are no changes.

~~§ 54.1-2990. § 54-325.8:10.~~ Mercy killing or euthanasia prohibited.—Nothing in this article shall be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

Drafting Note: There are no changes.

~~§ 54.1-2991. § 54-325.8:11.~~ Effect of declaration; suicide; insurance; declarations executed prior to effective date.—The withholding or withdrawal of life-prolonging procedures from a qualified patient in accordance with the provisions of this article shall not, for any purpose, constitute a suicide. Nor shall the making of a declaration pursuant to this article affect the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary. A person shall not be required to make a declaration as a condition for being insured for, or receiving, health care services.

The declaration of any qualified patient made prior to July 1, 1983 shall be given effect as provided in this article.

Drafting Note: There are no changes.

~~§ 54.1-2992. § 54-325.8:12.~~ Preservation of existing rights.—The provisions of this article are cumulative with existing law regarding an individual's right to consent or refuse to consent to medical treatment and shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incompetent patient, or a patient's family may have in regard to the withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth.

Drafting note: There is no change in the law.

CHAPTER 30.

NURSING.

Article 1.

Board of Nursing.

~~§ 54.1-3000. § 54-367.2.~~ Definitions.— ~~When~~ As used in this chapter ~~except in those instances where unless~~ the context clearly indicates ~~requires~~ a different meaning:

(a) ~~"Board"~~ means the Virginia State Board of Nursing.

(b) "Professional nursing" means the performance for compensation of any act in the observation, care and counsel of persons who are ill, injured, or experiencing changes in normal health processes or the maintenance of health or prevention of illness of others; or in the supervision and teaching of others who are or will be involved in nursing care; or the administration of medications and treatments as prescribed by a licensed medical practitioner. Professional nursing requires specialized education, judgment, and skill and is based upon knowledge and application of principles from the biological, social and physical sciences.

(c) "Practical nursing" means the performance for compensation of selected acts in the care of persons who are ill, injured, or experiencing changes in normal health processes. Such performances require a knowledge of and skill in simple nursing procedures, gained through prescribed preparation, but do not require the specialized education, judgment and skill essential for nursing by professional nurses. Practical nursing is performed under orders of a licensed medical practitioner, or under directions of a professional nurse.

(d) "Professional nurse," "registered nurse" or "registered professional nurse" means a person who is licensed under the provisions of this chapter to practice professional nursing as defined in subsection (b) of this section. The abbreviation "R.N." shall stand for such terms.

(e) "Practical nurse" or "licensed practical nurse" means a person who is licensed under the provisions of this chapter to practice practical nursing as defined in subsection (c) of this section. The abbreviation "L.P.N." shall stand for such terms.

"Board" means the Board of Nursing.

"Practical nurse" or "licensed practical nurse" means a person who is licensed under the provisions of this chapter to practice practical nursing as defined in this section. The abbreviation "L.P.N." shall stand for such terms.

"Practical nursing" means the performance for compensation of selected acts in the care of persons who are ill, injured, or experiencing changes in normal health processes. Such performances require a knowledge of and skill in simple nursing procedures, gained through prescribed preparation, but do not require the specialized education, judgment and skill essential for nursing by professional nurses. Practical nursing is performed under orders of a licensed medical practitioner or under directions of a professional nurse.

"Professional nurse," "Registered nurse" or "registered professional nurse" means a person who is licensed under the provisions of this chapter to practice professional nursing as defined in this section. The abbreviation "R.N." shall stand for such terms.

"Professional nursing" means the performance for compensation of any act in the observation, care and counsel of persons who are ill, injured, or experiencing changes in normal health processes or the maintenance of health or prevention of illness of others; or in the supervision and teaching of others who are or will be involved in nursing care; or the administration of medications and treatments as prescribed by a licensed medical practitioner. Professional nursing requires specialized education, judgment, and skill and is based upon knowledge and application of principles from the biological, social and physical sciences.

Drafting Note: These definitions have been rearranged, but no changes were made in the law.

§ 54.1-3001. § 54-367.36. Exemptions.—This chapter does not prohibit or require a license for shall not apply to the following:

(a) 1. The furnishing of nursing assistance in an emergency;

(b) 2. The practice of nursing, which is prescribed as part of their a study program of study , by nursing students enrolled in nursing education programs accredited approved by the Board or by graduates of accredited approved nursing education programs pending the results of the first licensing examination scheduled by a board of nursing following graduation;

(c) [Repealed.]

(d) 3. The practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his official duties;

(e) 4. The practice of nursing by a nurse who holds a currently current unrestricted licensed license in another state, the District of Columbia or a United States possession or territory for a

period of thirty days pending licensure in Virginia, if the nurse, upon employment, has furnished the employer satisfactory evidence of current licensure and submits proper application and fees to the Board for licensure before, or within ten days after, employment. At the discretion of the Board, additional time may be allowed for nurses currently licensed in another state, the District of Columbia or a United States possession or territory who are in the process of attaining the qualification for licensure in this State *Commonwealth*;

(f) [Repealed.]

(g) 5. *The practice of nursing by any registered nurse who holds a current unrestricted license in another state, the District of Columbia, or a United States possession or territory and is enrolled in an advanced professional program requiring clinical practice;*

(h) 6. *General care of the sick by nursing assistants, companions or domestic servants that does not constitute the practice of nursing as defined in this chapter; and*

(i) 7. *The care of the sick when done solely in connection with the practice of religious beliefs by the adherents thereof and which is not held out to the public to be licensed practical or professional nursing.*

Drafting Note: There is no change in the law.

~~§ 54-367.1. Declaration of public policy.—It is hereby declared to be the public policy of this Commonwealth to provide for the regulation of nursing education programs which prepare individuals for licensure under the provisions of this chapter and to establish standards of nursing practice in order to protect the health, safety and welfare of the Commonwealth's citizens.~~

Drafting Note: The policy statement has been deleted.

~~§ 54.1-3002. § 54-367.3. Virginia State Board of Nursing created; composition membership; terms; meetings; quorum; administrative officer.— There is hereby created the Virginia State Board of Nursing to be composed shall consist of nine members: Five as follows: five members shall be professional registered nurses, two members shall be licensed practical nurses and two members shall be citizen members.~~

~~§ 54-367.4. Appointment and terms of members of Board.— The terms of office of the Board shall be appointed by the Governor for terms of four years.~~

~~§ 54-367.5. Filling vacancies.—Any vacancy occurring in the membership of the Board shall be filled by the Governor for the unexpired term.~~

~~§ 54-367.6. Limitation on terms.—No members of the Board shall be eligible to serve more than two successive terms in addition to the portion of any unexpired term for which such member was appointed. Members appointed prior to July 1, 1982, shall serve the term for which they were appointed.~~

~~§ 54-367.8. Removal of members of Board. Any member of the Board may be removed from office by the Governor as provided in § 2.1-43 of the Code of Virginia.~~

~~§ 54-367.10. Meetings of Board; officers; quorum.— The Board shall meet annually in the month of each January and shall elect from its membership a president, vice-president and a secretary. It may hold such other meetings during the year as may be necessary to perform its duties. A majority of the Board including one of its officer officers shall constitute a quorum for the conduct of business at any meeting. Special meetings of the Board shall be called by the executive administrative officer employed as hereinafter provided by the Board upon written request of any two members.~~

~~§ 54-367.12. Executive officer and professional staff; qualifications.—The Board shall have an executive administrative officer and professional staff who shall be a registered nurses nurse. qualified by education and experience to perform such duties as shall be defined by the Board. Qualifications of the executive officer and professional staff shall be determined by the Board of Nursing.~~

Drafting Note: This section consolidates §§ 54-367.3, 54-367.4, 54-367.10 and 54-367.12. Sections 54-367.5, 54-367.6, and 54-367.8 are struck as these provisions are covered in the general provisions (see §§ 54.1-107 which refers to § 2.1-43).

~~§ 54.1-3003. § 54-367.9. Qualifications of members.—A. Each professional nurse appointed to the Board shall:~~

1. Be a citizen of the United States of America ;
2. Be a resident of this Commonwealth;
3. Have been graduated from an educational program ~~accredited~~ *approved* by a state board of nursing;
4. Be licensed in this Commonwealth as a ~~professional~~ *registered* nurse;
5. Have had at least five years' experience in nursing, nursing administration or teaching in ~~an~~ *a nursing* education program; and
6. Have been actively engaged in professional nursing *in this Commonwealth* for at least three years ~~immediately~~ preceding appointment or reappointment.

B. Each practical nurse appointed to the Board shall:

1. Be a citizen of the United States of America ;
2. Be a resident of this Commonwealth;
3. Have been graduated from a high school or the equivalent;
4. Have been graduated from a practical nursing program ~~accredited~~ *approved* by a state board of nursing;
5. Be licensed in this Commonwealth as a practical nurse;
6. Have had at least five years' experience in ~~practical~~ nursing; and
7. Have been actively engaged in practical nursing in this Commonwealth for at least three years ~~immediately~~ preceding appointment or reappointment.

Drafting Note: There are no changes.

~~§ 54.1-3004. § 54-367.4:1. Nominations by incorporated professional nurses associations .- Each professional appointment to the Board Nominations may be made for each professional vacancy from lists of three names , submitted to the Governor by incorporated professional nurses associations ; of at least three names for each vacancy submitted to the Governor by June 1 of each year . The Governor may notify such organizations promptly of any professional vacancy other than by expiration and like nominations may be made by such organizations for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees.~~

Drafting Note: All sections on nominations are being conformed.

~~§ 54-367.26. Fees paid into special fund.- All fees or other moneys received by the Board shall be paid into a special fund from which the expenses of the Board shall be paid.~~

Drafting Note: This section is no longer necessary (see § 54.1-2505).

~~§ 54.1-3005. § 54-367.11. Specific powers and duties of Board.-In addition to any other the general powers and duties conferred or imposed by law in this title , the Board shall have the following specific powers and duties:~~

~~(a) To adopt, and from time to time, revise rules and regulations not inconsistent with this chapter;~~

~~(b) 1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure under this chapter;~~

~~(c) 2. To ~~accredit~~ approve such programs as that meet the requirements of this chapter and of the Board;~~

~~(d) 3. To provide consultation service for educational programs as requested;~~

~~(e) 4. To provide for periodic surveys of educational programs;~~

~~(f) 5. To deny or withdraw accreditation approval from educational programs for failure to meet prescribed standards;~~

~~(g) To examine duly qualified applicants and issue and renew licenses;~~

~~(h) 6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;~~

~~(i) To conduct hearings upon charges calling for discipline of a licensee, or denial, suspension or revocation of a license;~~

~~(j) To cause the prosecution of all persons violating this chapter and to incur necessary expenses therefor;~~

~~(k) 7. To keep a record of all its proceedings ;~~

~~(l) through (o) [Repealed.]~~

~~(p) To establish and collect fees for the issuance and renewal of licenses that are sufficient to cover the expenses of the Board ; and~~

~~(q) To appoint advisory committees which shall consist of three persons or more who are knowledgeable in the pertinent area of practice or education under consideration. Members of advisory committees appointed by the Board shall not receive compensation as defined in § 2.1-20.2 of this Code, but shall receive reimbursement for travel and other actual and necessary expenses incurred while engaged in the performance of their duties .~~

Drafting Note: There is no change in the law. The General provisions for this title include the substance of the deleted language.

§ 54.1-3006. Advisory committees.—The Board may appoint advisory committees consisting of three persons or more who are knowledgeable in the area of practice or education under consideration. Members of advisory committees shall not receive compensation, but shall receive reimbursement for travel and other actual and necessary expenses incurred in the performance of their duties.

Drafting Note: This section consists of language taken from § 54-367.11.

~~§ 54.1-3007. § 54-367.32. Grounds for denial Refusal , revocation or suspension of license , censure or probation.—The Board shall have the power to deny, revoke or suspend any license issued by the Board or applied for in accordance with the provisions of this chapter, or to discipline a licensee by censure or probation upon proof that the person may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend any license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes :~~

~~(a) Is guilty of 1. Fraud or deceit in procuring or attempting to procure a license;~~

~~(b) through (e) [Repealed.]~~

~~(f) Is guilty of 2. Unprofessional conduct;~~

~~(g) Has willfully or repeatedly violated 3. Willful or repeated violation of any of the provisions of this chapter;~~

~~(h) Has knowingly and willfully committed any act which is 4. Conviction of a any felony under the laws of the Commonwealth or of the United States or any act which is a any misdemeanor under such laws and involves involving moral turpitude;~~

~~(i) Practices 5. Practicing nursing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;~~

~~(j) Is unable to practice nursing with reasonable skill and safety to patients by reason of illness, excessive use of 6. Use of alcohol ; drugs, narcotics, chemicals or any other type of material drugs to the extent that such use renders him unsafe to practice nursing or mental or physical illness rendering him unsafe to practice nursing or as a result of any mental or physical condition ; or~~

~~(k) Has had a license to practice nursing denied, revoked, suspended, or otherwise restricted 7. The denial, revocation, suspension or restriction of a license to practice nursing in another state, the District of Columbia or a United States possession or territory.~~

Drafting Note: There is no change in the law.

§ 54.1-3008. ~~§ 54-367-25~~. Particular violations; prosecution.—It shall be a *Class 1* misdemeanor for any person to:

(a) Sell or fraudulently obtain or furnish any nursing diploma, license, or record or to aid or abet therein;

(b) 1. Practice nursing under the authority of a license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) 2. Practice nursing unless duly licensed to do so under the provisions of this chapter;

(c1) 3. Knowingly employ an unlicensed person as a professional or practical nurse or knowingly permit an unlicensed person to represent himself as a professional or practical nurse;

(d) 4. Use in connection with his name any designation tending to imply that he is a professional nurse or a practical nurse unless duly licensed so to practice under the provisions of this chapter;

(e) 5. Practice professional nursing or practical nursing during the time his license issued under the provisions of this chapter shall be is suspended or revoked;

(f) 6. Conduct a nursing education program for the preparation of professional or practical nurses unless the program has been accredited approved by the Board ; or

(g) Otherwise violate any provisions of this chapter.

Such misdemeanors shall be prosecuted by the Commonwealth's attorney of the county or city in which the violation occurred .

Drafting Note: There is no change in the law. The struck provisions are not necessary (See § 54.1-102).

§ 54.1-3009. ~~§ 54-367-33:1~~. Proceedings to deny, revoke or suspend license.— A. The provisions of the Administrative Process Act (~~§ 9-6.14:1 et seq.~~) shall govern proceedings to deny, revoke or suspend a license pursuant to § 54-367-32.

B. A. An allegation of any of the grounds enumerated in § 54-367-32 against a licensee shall be made in writing to the Board.

C. B. The Board may suspend a license pending without a hearing, simultaneously with the institution of proceedings for a hearing, when the if it finds that there is a substantial danger to the public health or safety which warrants such action. The Board may take such action meet by means of a telephone conference call if, in the opinion of the officers of the Board, an imminent danger to public health and safety warrants the action ; and the Board has made when summarily suspending a license, if a good faith effort to convene a regular meeting but assemble a quorum of the Board has failed and in the judgment of the officers of the Board, the continued practice of the practitioner constitutes a substantial danger to public health or safety.

Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

D. Whenever the Board has probable cause to believe, after informal proceedings pursuant to § 9-6.14:1 of the Administrative Process Act, that cause exists to act pursuant to § 54-367-32 (j), the Board may require the person to submit to a mental or physical examination by physicians designated by it. Failure to submit to such examination shall constitute an admission of the allegations against the person unless the failure was due to circumstances beyond such person's control, and no other evidence to prove such allegations shall be necessary.

E. Any person whose certificate is suspended or revoked for a cause set forth in § 54-367-32 (j) shall be afforded an opportunity at reasonable intervals to demonstrate that he can resume the competent practice of nursing with reasonable skill and safety to patients.

C. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to

practice nursing with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice nursing with reasonable skill and safety to patients.

Drafting Note: The substance of the first paragraph is included in § 54.1-109. Although this provision has been reworded, there are no changes in the law.

§ 54.1-3010. ~~§ 54-367-33:2. Informal~~ Special conference committee; appointment of members and chairman; notice to practitioner and request for ~~informal~~ conference; conference committee findings; further proceedings.—Upon receipt of information that a practitioner may be subject to disciplinary action by the Board for any of the grounds set forth in § ~~54-367-32 of the Code of Virginia~~ this chapter, the President of the Board may appoint a special ~~informal~~ conference committee to act in accordance with § 9-6.14:11 of the Code of Virginia. This special ~~informal~~ conference committee shall consist of three members of the State Board of Nursing, one of whom shall be designated as chairman.

The ~~Executive Secretary administrative officer~~ of the Board shall notify the chairman of the special ~~informal~~ conference committee of his appointment and that of his co-members. The ~~Executive Secretary administrative officer~~ of the Board shall transmit to the chairman the information which initiated the appointment of the special conference committee.

The ~~Executive Secretary administrative officer~~ shall ~~thereupon~~ mail to the practitioner who is the subject of the conference a statement of such information and a request for an ~~informal~~ a conference with the committee at a time and place to be specified in the request. A statement of the action the conference committee is authorized to take ~~following the conference~~ shall also be included.

After the conference, if the conference committee is ~~of the opinion~~ agrees that the charges are without foundation, the conference committee shall notify the practitioner by certified mail that ~~her/~~ his record has been cleared of any charge which might affect ~~her/~~ his right to practice nursing in the Commonwealth.

After the conference, if the conference committee is ~~of the opinion~~ agrees that dismissal of the charges is not appropriate, the committee shall either: (i) with the consent of the licensee, present the committee's findings and conclusions in writing to the Board with recommendations for disciplinary action, or (ii) refer the case for formal hearing ~~in accordance with §§ 54-367-33:1 and 9-6.14:12 of the Code of Virginia~~. If formal administrative proceedings are initiated, the Board members who participated in the ~~informal~~ proceedings of the special conference committee shall not participate in further Board deliberations in the case.

Drafting Note: There is no change in the law. The APA is applicable to all disciplinary appeals through § 54.1-109.

§ 54.1-3011. ~~§ 54-367-25. Renewal of licenses; lapsed licenses; reinstatement; penalties.—~~ (a) A. Every license issued under the provisions of this chapter shall be renewed biennially by such time as the Board may prescribe by regulation. The Board shall mail an application for renewal of license to every licensee, but the failure to receive such application shall not excuse any licensee from the requirements for renewal ~~herein contained~~. The person receiving such application shall furnish the requested information requested ~~thereon~~ and return the form to the Board with the renewal fee ~~therefor prescribed by the Board~~.

(b) B. Any licensee who allows his license to lapse by failing to renew the license may be reinstated by the Board upon submission of ~~evidence~~ satisfactory to the Board ~~evidence~~ that he is prepared to resume practice in a competent manner and upon payment of the fee ~~prescribed by the Board~~.

(c) C. Any person practicing nursing during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

Drafting Note: There is no change in the law.

§ 54.1-3012. ~~§ 54-367-11:1. Additional power of the Board.—~~In addition to the other powers enumerated in § ~~54-367-11~~ this title, the Board may take those steps necessary to obtain recognition by the United States Secretary of Education as a reliable authority concerning the quality of education offered by educational institutions or programs in the area of practical nursing.

Drafting Note: There is no change in the law.

§ 54.1-3013. ~~§ 54-367.27. Accrediting Approval of nursing education program.~~—An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the Board and submit evidence that:

(a) 1. It is prepared to meet the minimum standards prescribed by the Board for *either* a professional nursing curriculum or ~~for~~ a practical nursing curriculum ; as the case may be ; and

(b) 2. It is prepared to meet such other standards as may be established by law or by the Board.

A survey of the institution and its entire nursing education program shall be made by the ~~executive administrative~~ officer or other authorized employee of the Board, who shall submit a written report of the survey to the Board. If, in the opinion of the Board, the requirements ~~for an accredited nursing education program necessary for approval~~ are met, it shall be ~~accredited approved~~ as a nursing education program for professional or practical nurses.

§ 54-367.29. ~~Approval of new programs required.~~—

New nursing education programs shall not be established or conducted unless approved by the Board.

Drafting Note: There is no change in the law. This section consolidates §§ 54-367.27 and 54-367.29.

§ 54.1-3014. ~~§ 54-367.28. Survey of nursing education programs; discontinuance of program.~~—~~From time to time as deemed necessary by the~~ The Board ; it shall be the duty of the Board , through its ~~executive administrative~~ officer ; or other authorized representative of the Board , to survey all nursing education programs in the State Commonwealth as necessary . Written reports of such surveys shall be submitted to the Board. If the Board determines that any ~~accredited approved~~ nursing education program is not maintaining the *required* standards ~~required by law or by the Board~~ , notice thereof in writing specifying the deficiencies shall be immediately given to the institution conducting the program.

A program which fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which such facts are established.

Drafting Note: There is no change in the law.

§ 54.1-3015. ~~§ 54-367.30. Continuance of license of certified tuberculosis nurse.~~—Any person licensed as a certified tuberculosis nurse to perform duties as prescribed by the State Board of Examiners of Nurses, now known as the State Board of Nursing, on July 1, 1970, shall continue to be so licensed ; ~~provided that he is not guilty of any action specified in § 54-367.32 unless his license is suspended or revoked in accordance with the provisions of this chapter .~~

Drafting Note: There is no change in the law.

§ 54-367.35:1. ~~Injunctions.~~—Any person may be enjoined from violating any provision of this chapter or any regulation of the Board by the circuit court of the county or city where such person resides or where the violation occurred at the suit of the Board, any member of the Board or any citizen of the State.

Drafting Note: Injunctive authority is included in new § 54.1-111 for all boards.

Article 2.

Licensure of Registered Nurses.

§ 54.1-3016. ~~§ 54-367.17. Use of title "Registered Nurse" or "R.N."~~—Any person who holds a license to practice professional nursing in Virginia shall have the right to use the title "Registered Nurse" and the abbreviation "R.N." No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a registered nurse.

Drafting Note: There are no changes.

§ 54.1-3017. ~~§ 54-367.13. Qualifications of applicant for registered nurse's license; examination; graduates of foreign nursing education programs.~~—(a) A. An applicant for a license to practice professional nursing shall submit evidence satisfactory to the Board that such applicant:

(1) ~~[Repealed.]~~

(2) 1. Has completed an approved four-year high school course of study or the equivalent thereof as determined by the appropriate educational agency;

~~(3)~~ 2. Has received a diploma or degree from an ~~accredited~~ *approved* professional nursing education program;

~~(4)~~ 3. Has passed a written examination as required by the Board; and

~~(5)~~ 4. Has committed no acts which are grounds for disciplinary action as set forth in § 54-367.32 of the Code of Virginia *this chapter* .

~~(b)~~ [Repealed.]

~~(e)~~ B. An applicant who graduated from a nursing education program in a foreign country may be required to pass the Commission on Graduates of Foreign Nursing Schools Qualifying Examination prior to admission to the examination for licensure in this *State Commonwealth* .

Drafting Note: There are no changes in the law.

§ 54.1-3018. ~~§ 54-367-14.~~ Registered nurse's license by endorsement.—The Board may issue a license by endorsement to an applicant to practice professional nursing ~~provided if~~ the applicant has been ~~duly~~ licensed as a professional or registered nurse under the laws of another state, the District of Columbia or a United States possession or territory ; ~~if and~~ , in the opinion of the Board , the applicant meets the qualifications required of registered nurses in this *State Commonwealth* .

Drafting Note: Reciprocity authority for all boards is included in § 54.1-103. However, this section appears to require a case-by-case evaluation.

Article 3.

Licensure of Practical Nurses.

§ 54.1-3019. ~~§ 54-367-23.~~ Use of title "Licensed Practical Nurse" or "L.P.N."—Any person who holds a license to practice as a licensed practical nurse in ~~this State~~ *Virginia* shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N." No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a licensed practical nurse.

Drafting Note: There are no changes.

§ 54.1-3020. ~~§ 54-367-19.~~ Qualifications of applicant for practical nurse's license.— ~~(a)~~ An applicant ~~who desires to be licensed for a license to practice~~ as a practical nurse shall furnish evidence satisfactory to the Board that the applicant:

~~(1)~~ [Repealed.]

~~(2)~~ 1. Has completed two years of high school or its equivalent;

~~(3)~~ 2. Has received a diploma from an ~~accredited~~ *approved* practical nursing program;

~~(4)~~ 3. Has passed a written examination as required by the Board; and

~~(5)~~ 4. Has committed no acts which are grounds for disciplinary action as set forth in § 54-367.32 of the Code of Virginia *this chapter* .

~~(b)~~ [Repealed.]

Drafting Note: There are no changes in the law.

§ 54.1-3021. ~~§ 54-367-20.~~ Practical nurse's license by endorsement.—The Board may issue a license by endorsement to any applicant to practice as a licensed practical nurse ~~provided if~~ the applicant has been ~~duly~~ licensed ~~or registered~~ as a ~~licensed~~ practical nurse or a person entitled to perform similar services under laws of another state, the District of Columbia or a United States possession or territory ; ~~if and~~ , in the opinion of the Board , the applicant meets the requirements for licensed practical nurses in this Commonwealth.

Drafting Note: Reciprocity authority for all boards is included in § 54.1-103. However, this section appears to require a case-by-case evaluation.

CHAPTER 31.

NURSING HOME ADMINISTRATORS.

§ 54-899. Declaration of public policy.—It is hereby declared to be the public policy of this

State to provide for the development, establishment and enforcement of basic standards for the training, experience and education of individuals acting as administrators of nursing homes; to insure safe and adequate treatment of individuals in nursing homes and to complement and supplement laws and regulations of the United States of America and appropriate federal agencies under Title XIX of the Social Security Act and amendments thereto.

Drafting Note: The policy statement is being deleted because it is unnecessary.

§ 54.1-3100. § 54-900. Definitions.—As used in this chapter, unless the context otherwise requires a different meaning :

(a) "Board" shall mean the State Board of Examiners for Nursing Home Administrators;

(b) "Nursing home administrator" shall mean any individual who is charged with the general administration of a nursing home, whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals;

(c) "Nursing home" shall mean any institution or facility required to be licensed under the provisions of Chapter 16 (§ 32-297 et seq.) of Title 32 of this Code as amended, and the rules and regulations promulgated pursuant to § 32-301 thereof, as a nursing home, including but not limited to nursing homes owned or administered by any agency of the Commonwealth of Virginia or a political subdivision thereof.

"Board" means the Board of Nursing Home Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

Drafting Note: This section has been revised; however, there is no change in the law.

§ 54.1-3101. § 54-903. Continuation and composition of State Board of Examiners for Nursing Home Administrators; terms of office ; officers; quorum; special meetings.—The State Board of Examiners for Nursing Home Administrators is hereby continued. It shall consist of seven members, three who are licensed nursing home administrators and four who are from professions and institutions concerned with the care and treatment of chronically ill and infirm aged elderly patients. Two of the licensed nursing home administrators shall be administrators of proprietary nursing homes. The terms of Board members shall be four years.

§ 54-907. Officers; quorum of Board; special meetings. The Board shall annually elect its own a chairman. Three members of the Board, including one who is not a licensed nursing home administrator, shall constitute a quorum. Special meetings of the Board shall be called by the secretary upon the written request of any member.

§ 54-903.1. Powers and duties of Board.— The powers and duties of the Board shall be as follows:

1. To establish the qualifications of applicants for certification or licensure, provided that all such qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure, including preparation, administration and grading of examinations.

3. To certify or license qualified applicants.

4. To levy and collect fees for certification or licensure and renewal thereof that are sufficient to cover all expenses for the administration and operation of both the Department and the Board.

5. To promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

6. To ensure that inspections are conducted relating to the practice of each certified or licensed practitioner to ensure that such practitioner is conducting his practice in a competent manner and within the regulations promulgated by the Board.

7. To revoke, suspend, or fail to renew a certificate or license which it has authority to issue for just causes as are enumerated in regulations of the Board.

8. To receive complaints concerning the conduct of any person whose activities are regulated by the Board and take appropriate disciplinary action if warranted.

9. To ~~be~~ authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

10. To establish agreements with other jurisdictions for the recognition of certificates and licenses issued by such other jurisdictions to the extent deemed appropriate by the Board.

Drafting Note: This section consolidates §§ 54-903, 54-903.1 and 54-907. There is no change in the law. See the general provisions for powers of health regulatory boards.

§ 54.1-3102. ~~§ 54-901.1.~~ License required.—In order to engage in the general administration of a nursing home, it shall be necessary to hold a requisite valid *nursing home administrator's license issued by the Board*.

Drafting Note: There is no change in the law.

§ 54.1-3103. ~~§ 54-901.~~ Administrator required for operation of nursing home; operation after death, illness, etc., of administrator; notification of Board.—~~No~~ *All licensed nursing home homes* within the State ~~may operate except Commonwealth shall be~~ under the supervision of an administrator licensed by the provisions of this chapter, ~~except that if Board.~~ *If a licensed nursing home administrator dies, becomes ill, resigns or is discharged, the nursing home which was administered by him at the time of his death, illness, resignation or discharge may continue to operate until his successor qualifies, but in no case for longer than six months; provided, the .* The temporary supervisor or administrator *notifies shall immediately notify the State Board of Examiners for Nursing Home Administrators and the Commissioner of Health that the nursing home is operating without the supervision of a licensed nursing home administrator.*

Drafting Note: This section has been revised. There is no change in the law.

CHAPTER 32.

OPTOMETRY.

Article 1.

General Provisions.

§ 54.1-3200. ~~§ 54-368.~~ Practice of optometry defined. Optometry is hereby declared to be a profession *Definitions*.— Any person shall be deemed to be practicing optometry within the meaning of this chapter who shall display a sign, such as an eye, a pair of eyes, or who shall in any way advertise himself as an optometrist, or who shall examine the human eye, to ascertain the presence of defects or abnormal conditions which can be corrected or relieved or the effects of which may be corrected or relieved by the use of lenses, prisms, or ocular exercises, or employ any subjective or objective mechanical means to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye, or have in his possession testing appliances for the purpose of the measurement of the powers of vision, or diagnose any ocular refractive deficiency or deformity, visual or muscular anomaly of the human eye, or prescribe or adapt lenses, prisms, or ocular exercises for the correction or relief of the same, or who holds himself out as being able to do so, or who shall use the title of doctor of optometry (O.D.), or any other letters or title in connection with his name, which in any way may convey the impression that he is engaged in the practice of optometry. *As used in this chapter unless the context requires a different meaning:*

"Board" means the Board of Optometry.

"Optometrist" means any person practicing the profession of optometry as defined in this chapter and the regulations of the Board.

"Practice of optometry" means the examination of the human eye to ascertain the presence of defects or abnormal conditions which may be corrected or relieved by the use of lenses, prisms or ocular exercises; the employment of any subjective or objective mechanism to determine the accommodative or refractive states of the human eye or range or power of vision of the human eye; the use of testing appliances for the purpose of the measurement of the powers of vision; the diagnosis of any ocular refractive deficiency or deformity, visual or muscular anomaly of the human eye; and the prescribing or adapting of lenses, prisms or ocular

exercises for the correction or relief of such conditions.

Drafting Note: This section has been reworded. The substance of the next section is also from § 54-368.

§ 54.1-3201. What constitutes practice of optometry.—Any person who in any way advertises himself as an optometrist or uses the title of doctor of optometry (O.D.) or any other letters or title in connection with his name which in any way conveys the impression that he is engaged in the practice of optometry shall be deemed to be practicing optometry within the meaning of this chapter.

Drafting Note: The substance of this section was taken from § 54-368.

§ 54.1-3202. § 54-369. Exemptions from chapter .— Nothing contained in this chapter shall be construed to apply to duly licensed physicians authorized to practice medicine under the laws of this State, nor shall anything in § 54-306, subsection (10), be construed to prohibit the sale of spectacles, and eyeglasses, or any of such articles, as merchandise from a regularly located and established place of business. This chapter shall not apply to physicians licensed to practice medicine by the Board of Medicine or to prohibit the sale of nonprescription eyeglasses and sunglasses. Contact lenses shall not be sold as merchandise from a retail business other than one operated by a physician, an optometrist or an optician.

Drafting Note: This section has been revised. The language on contact lenses was added for clarity.

§ 54.1-3203. § 54-386. Certificate License to be displayed.—Every person practicing optometry shall display his certificate of registration or exemption license in a conspicuous place in the principal office wherein in which he practices.

Drafting Note: There is no change in the law.

§ 54.1-3204. § 54-306. Prohibited acts.—It shall be unlawful for any person:

(1) 1. To practice optometry in this State Commonwealth without being the holder of either a current valid certificate of registration or certificate of exemption duly holding a license issued to him and filed as provided by the Board . Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law .

(2) 2. To falsely impersonate a registered licensed optometrist of like or different name.

(3) 3. To buy or sell or fraudulently obtain a diploma ; certificate of registration or certificate of exemption issued to another license .

(4) 4. To do any act for which if he were an optometrist his certificate of registration or exemption license may could be revoked as provided by § 54-388 this chapter.

(5) 5. To solicit from house to house, place to place, or on the highways or byways the fitting, selling or peddling of spectacles, eyeglasses or lenses.

(6) To use, employ or cause to be used or employed any false, misleading or trick advertisement or sign or any advertisement or sign which would tend to deceive or mislead the public concerning any matter relating to the practice of optometry or to the furnishing, supplying or dispensing of any article used or employed in connection with the practice of optometry whether such advertisement be printed, radio, display or by any other means.

(7) 5. To have possession of possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he be is the holder of or unless he regularly employs on the premises the holder of a certificate of registration or exemption to practice optometry licensed optometrist or a duly licensed physician.

(8) [Repealed.]

(9) 7. To publish or cause to be published in any manner an advertisement that (i) is false, deceptive or misleading, (ii) contains a claim of professional superiority or (iii) violates such regulations as may be promulgated by of the Board governing advertising by optometrists.

(10) 8. To sell, provide, furnish, supply or duplicate spectacles, eyeglasses, or lenses for the correction of vision ; except upon without the prescription of a duly licensed physician or duly registered licensed optometrist, unless he is the holder of a certificate of registration or

exemption license to practice optometry or a license to practice medicine under the laws of this State Commonwealth .

Drafting Note: There is no change in the law.

~~§ 54.1-3205. § 54-397.1. Practicing in connection with a commercial or mercantile establishment.— A. It shall be unlawful for any optometrist to practice his profession as a lessee of any or in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a duly registered licensed practitioner and is practicing or will practice optometry as a lessee of any such or in the commercial or mercantile establishment.~~

~~B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time licensed optometrist in its established place of business on June 21, 1938.~~

~~C. For the purposes of this section, the term “commercial or mercantile establishment” means a business enterprise engaged in the selling of commodities.~~

~~But nothing herein D. This section shall not be construed to prohibit or prevent the rendering of professional services to the officers and employees of any person, firm or corporation by an optometrist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them.~~

~~Nothing in this section shall be construed as repealing subsections (j) and (k) of subdivision 2 of § 54-388.~~

Drafting Note: There is no change in the law. Subsections B and C of § 54-388 are transferred here (see § 54.1-3215).

~~§ 54.1-3206. § 54-398.02. Report of conviction or injunction to Board; revocation or suspension of certificate or license thereupon.—It shall be the duty of the clerk of every circuit court wherein in which any person is convicted of any violation of this chapter or enjoined from unlawfully practicing optometry to report the same to the Board. The Board may thereupon suspend or revoke any certificate or license held by the person so convicted or enjoined. Every such report shall be directed to the secretary of the Board.~~

Drafting Note: There is no change in the law.

~~§ 54-397. Penalties for violation, seizure and forfeiture of equipment, etc.— A. Any violation of any provision of this chapter shall be a Class 1 misdemeanor.~~

~~B. In no case shall a person convicted of a violation of the provisions of § 54-396 (1) be entitled to recover anything for the services rendered or eyeglasses, lenses, frames or mountings furnished.~~

~~C. Any appliances, equipment, eyeglasses, lenses, frames, mountings and other supplies or devices used by a person in violating § 54-396 (1) may be seized by the Board and shall be subject to forfeiture upon conviction of a violation of this chapter.~~

Drafting Note: This section is no longer necessary because penalties are covered in the general provisions for the title.

~~§ 54-398.01. Injunctions.—In addition to the penalties provided in §§ 54-388 and 54-397, any person unlawfully practicing optometry may be temporarily or permanently enjoined from such unlawful practice by the circuit court of the county or city where such person resides or where the unlawful practice occurred at the suit of the Board, any member of the Board or any citizen of the State.~~

Drafting Note: Injunctive authority is included in § 54.1-111 for all boards.

Article 2.

Board of Optometry.

~~§ 54.1-3207 § 54-370. Board of Examiners continued as Virginia Board of Optometry ; use of word “Board”.— The Virginia State Board of Examiners in Optometry is continued and shall hereafter be known as the Virginia State Board of Optometry. As used in this chapter “Board” means the Virginia Board of Optometry.~~

~~§ 54-371. Number and appointment of members; terms; filling vacancies. The Board of Optometry shall be composed of six members as follows: five licensed optometrists and one~~

citizen member . As the terms of office respectively of the professional members expire by limitation, there being one expiration on June 30 of each year, the Governor shall appoint, to fill the vacancies so occasioned, qualified persons whose terms shall be for five years from the day on which that of their immediate predecessors expired. In addition to the five professional members, one citizen member shall be appointed to the Board for a term of five years. All vacancies occurring on the Board shall be filled by the Governor.

The terms of office of the members shall be five years.

§ 54-375. *Qualifications of members.* The professional members of the Board shall possess sufficient knowledge of theoretical and practical optometry to practice optometry, and shall have been residents of this Commonwealth duly licensed as optometrists and actually engaged in the practice of optometry within the meaning of this chapter for at least five years preceding prior to the date of their appointment.

§ 54-373. *Limitation on number of terms.* No person shall be eligible to serve for or during more than two successive terms, and incumbency during the term in force on June 24, 1944, constitutes the first of the two successive terms with respect to eligibility for appointment.

§ 54-374. *Removal of members.* The Governor may remove any member of the Board for misconduct, incapacity, or neglect of duty and he shall be the sole judge of the sufficiency of the cause for removal. He shall report every such removal at once to the General Assembly, if it is in session, and if not at the beginning of the next session.

Drafting Note: This section consolidates §§ 54-370, 54-371, 54-373, 54-374 and 54-375. Section 54.1-107 covers residence in Virginia, appointments, limitations on terms and refers to § 2.1-43 which concerns removal. Therefore, these concepts have been struck here.

§ 54.1-3208. § 54-372. *Nominees of Virginia Optometric Association Nominations* .- Each professional appointment to the Board *Nominations* may be made for each professional vacancy from a list of at least three names for each vacancy submitted to the Governor ; or to the Governor elect, by the Virginia Optometric Association, Incorporated. Nominations are to be made to the Governor by June 1 of each year. The Governor may notify the Association promptly of any professional vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees of the Association.

Drafting Note: All nomination sections are being conformed. There is no change in the law.

§ 54.1-3209 § 54-377 . *Administering Oaths and taking testimony.*—Any member of the Board may, upon being duly designated by a majority of the Board, or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of the Board.

Drafting note: There is no change in the law.

§ 54-376. *Rules and regulations.* The Board shall make such rules and regulations not inconsistent with the law as may be necessary:

- (1) For the proper performance of its duties;
- (2) To govern the practice of optometry;
- (3) To fix the requirements of candidates desiring admission to the examination in optometry; and
- (4) To govern the time, place and manner of conducting examinations in optometry, and the manner and form in which applications for such examinations shall be filed.

Drafting note: There is no need for this section because § 54.1-2400 provides more comprehensive general powers and duties.

§ 54-377.1. *Employment of investigators; service and execution of process, etc.* The Board may employ a suitable person or persons to assist it in any necessary investigation of complaints filed with it alleging the unlicensed practice of optometry or grounds for revocation or suspension of certificates issued by the Board. For such purpose, such persons are authorized to serve and execute any process issued by any court, and to serve and execute any papers or subpoenas for records issued by the Board.

Drafting Note: Investigations and enforcement are covered in § 54.1-2506.

§ 54.1-3210. § 54-378. *Seal; secretary executive director* .-The Board shall adopt a seal ; and of which the secretary executive director shall have the custody thereof, and he . The executive director shall keep a record of all proceedings of the Board, which shall be open to the public

at all proper times for inspection.

Drafting Note: There is no change in the law.

~~§ 54.1-3211. § 54-380. Board to provide for Examination and set necessary standards .-~~The Board shall ~~make provision~~ provide for the examination of applicants for ~~registration licensure~~ to practice optometry, and shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license to practice optometry.

~~§ 54-381. Semiannual examinations. Such~~ The examination shall be held ~~given~~ at least twice ~~in each year semiannually~~ if there ~~be~~ are any candidates for examination who have applied to the Board for examination at least thirty days before the date fixed for the holding of such examination.

The examination shall include anatomy, physiology, pathology and the use of the appropriate instruments.

The Board may determine a score which it considers satisfactory on any written examination of the National Board of Optometry. The Board may waive its examination for a person who achieves a satisfactory score on the examination of the National Board of Optometry.

Drafting Note: This section consolidates §§ 54-380 and 54-381. This section also includes parts of § 54-382. There are no changes in the law.

Article 3.

Licensure of Optometrists.

~~§ 54.1-3212. § 54-382. Qualifications of applicants ; subjects of examination; acceptance of results of examination of National Board of Optometry .-~~ Every person who desires to practice optometry in this State, upon presentation of satisfactory evidence, verified by oath, that he is more than eighteen years of age, of good moral character, has a preliminary education equivalent to at least four years in a public high school and has graduated from a school of optometry, maintaining a standard satisfactory to the Board, shall stand an examination before the Board, which examination shall include anatomy, physiology, pathology of the eye, and the use of the ophthalmoscope to determine his qualifications therefor.

Should the Board determine a score which is considered a satisfactory level of achievement on any written examination of the National Board of Optometry and should any such person take the said written examination given by the said National Board of Optometry and achieve the level determined by the Board, the Board shall waive the requirement that such person stand the written portion of the examination before it and shall accept the results of the written examination of the National Board of Optometry.

An application for a license to practice optometry shall be made in writing and shall be accompanied by satisfactory proof that the applicant has been graduated and received a doctor of optometry degree from a school of optometry approved by the Board.

Drafting Note: This section has been revised and part of it has been moved to § 54.1-3211.

~~§ 54.1-3213. § 54-383. Issuance of certificate license; fee; renewal .-~~Every candidate successfully passing ~~such~~ the examination shall be ~~registered licensed~~ by the Board as possessing the qualifications required by law ; and shall receive from the Board a certificate to that effect .

~~§ 54-393. Fee for examination and certificate.-~~ The fee for examination and certificate licensure shall be prescribed by ~~regulation~~ of the Board and shall be paid to the secretary executive director of the Board by the applicant upon filing his application.

~~§ 54-394. Renewal of certificate.-~~ Every certificate license to practice optometry granted under the provisions of this chapter shall be ~~required to be renewed~~ at such time, in such manner and upon payment of such fees as the Board may prescribe ~~by regulation~~ .

Drafting Note: This section consolidates §§ 54-383, 54-393 and 54-394. There is no change in the law.

~~§ 54.1-3214. § 54-384. When certificate license issued without examination.-~~Any person who has successfully passed a ~~standard~~ an examination in optometry in any state of the United States and is the holder of a certificate license to that effect, issued by the board of such state, and has conducted an ethical professional practice of optometry for at least one year ~~next prior~~ , may, upon application to the Virginia State Board of Examiners in Optometry, upon the payment of the amount of the regular examination fee, be issued a certificate license without examination

; and be registered as qualified to practice optometry in this State; provided the standard of qualifications and examination under which he secured such certificate to practice was at least as high as that prevailing in Virginia, at the time of his making application to be so registered. And provided further, that such applicant has not failed in an examination in optometry before the Virginia State Board of Examiners in Optometry and that the state from which such applicant comes grants like privileges to persons who have passed the examination of the Board

The Board may recognize such examinations if they are approximately equivalent to its examination, the applicant's educational qualifications are equivalent to those required in this Commonwealth, the applicant has not failed an examination in optometry in Virginia, and the state from which the applicant comes grants reciprocity to persons licensed in the Commonwealth.

Drafting Note: This section has been revised, but there is no change in the law.

§ 54.1-3215. § 54-388. *Grounds for Reprimand, revocation of certificate or censure of holder or imposition of monetary penalty; mental or physical examination; resumption of practice and suspension .—A. The Board may revoke or suspend a certificate of registration or exemption, license or censure reprimand the holder of such certificate licensee ; or, if the holder is not criminally prosecuted, impose a monetary penalty not in excess of \$500, to be paid into the Literary Fund for any of the following causes:*

1. *Grounds generally. - (a) [Repealed.]*

(b) *If such person is guilty of 1. Fraud or deceit in his practice;*

(c) *If such person has been convicted 2. Conviction of a any felony under the laws of this State or of the United States the Commonwealth, another state, the District of Columbia or any United States possession or territory or of a any misdemeanor under such laws involving moral turpitude;*

(d) *If such person conducts 3. Conducting his practice in such a manner as to make his practice a danger to endanger the health and welfare of his patients or to the public; or is unable to practice optometry with reasonable skill and safety to patients by reason of illness, drunkenness,*

4. *Excessive use Use of alcohol or drugs ; narcotics, chemicals or any other type of material or as a result of any mental or physical condition to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry ;*

(e) *If such person has been guilty of fraud or deceit in the answering of any question required to be answered as to his qualification for the purpose of being admitted to examination or in the procuring of a certificate to practice optometry;*

(f) *If such person 5. Knowingly and willfully employs employing an unlicensed person to do anything for which a certificate license to practice optometry is required;*

(g) *If such person practices 6. Practicing optometry while suffering from any infectious or contagious disease;*

(h) *If such person neglects or refuses 7. Neglecting or refusing to display his certificate license and the renewal receipt for the same for the current year ; as required by § 54-386 for more than thirty days after being required to do so by written notice given him by any member of the Board ;*

(i) *[Repealed.]*

(j) *If such person engages in the house to house soliciting for the purpose of fitting or selling or peddling spectacles, eyeglasses or lenses.*

2. *Unprofessional conduct. - The following acts shall be deemed unprofessional conduct on the part of the holder of a certificate of registration to practice optometry:*

(a) *The 8. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;*

(b) *The employment of any person to solicit from house to house the sale of eyeglasses, spectacles, lenses, frames, mountings or optometric services or examinations;*

(c) The conducting or employment of any person to conduct a house to house canvass for the purpose of selling, advertising or soliciting the sale of spectacles, eyeglasses, lenses, frames, mountings or optometric services or examinations;

(d) 9. The advertising *Advertising* which directly or indirectly the following: Statements as to skill or method of practice of any person or of any optometrist, in any manner that will tend to deceive *deceives*, mislead *misleads* or defraud *defrauds* the public; , to claim *claims* professional superiority; , to offer *offers* free optometrical services or examinations;

(e) 10. The employment *Employing*, hiring, procuring, or inducing a person not licensed to practice optometry to so practice;

(f) 11. The aiding *Aiding* or abetting in the practice of optometry any person not duly licensed to practice in this State *Commonwealth*;

(g) 12. The advertising *Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the certificate of registration license*;

(h) 13. The lending *Lending*, leasing, renting or in any other manner placing his certificate of registration *license* at the disposal or in the service of any person not licensed to practice optometry in this State *Commonwealth*;

(i) 14. The splitting *Splitting* or dividing of a fee with any person or persons other than with a duly registered *licensed* optometrist who is a legal partner;

(j) But nothing contained in this statute shall prohibit any registered optometrist from practicing optometry as a full-time employee on the premises of any commercial or mercantile establishment and from advertising, either himself or through such commercial or mercantile establishment, that he is a fully registered optometrist and offering to practice optometry as an employee of such commercial or mercantile establishment;

(k) No registered optometrist shall practice optometry as an employee, directly or indirectly, of any commercial or mercantile establishment nor shall he so advertise himself or through such commercial or mercantile establishment, unless such commercial or mercantile establishment was employing a full-time registered optometrist in its established place of business on June 21, 1938;

(l) 15. The violation of such *Violating* other standards of unprofessional conduct as may be adopted as rules by the Board.

3. [Repealed.]

B. Except in the case of a monetary penalty, the Board may act pursuant to this section notwithstanding any action pending or consummated before any court.

C. Whenever the Board has probable cause to believe, after informal proceedings pursuant to § 9-6-14-11 of the Administrative Process Act, that cause exists to act pursuant to subsection A 1 (d), the Board may require the person to submit to a mental or physical examination by physicians designated by it. Failure to submit to such examination shall constitute an admission of the allegations against the person, unless the failure was due to circumstances beyond such person's control, and no other evidence to prove such allegations shall be necessary.

D. Any person whose certificate is suspended or revoked for the cause set forth in subsection A 1 (d) shall be afforded an opportunity at reasonable intervals to demonstrate that he can resume the competent practice of optometry.

Drafting Note: The provisions relating to commercial and mercantile practice are in § 54.1-3205. The last two subsections have been moved to § 54.1-3216. There are no changes in the law although some redundant language has been removed.

§ 54.1-3216. Evidence; mental or physical examinations.—The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to practice optometry with reasonable skill and safety to patients because of excessive use of alcohol and drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by the Board. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this section shall be afforded reasonable opportunity to demonstrate that he

is competent to practice optometry with reasonable skill and safety to patients.

Drafting Note: This new section is a revision of subsections C and D of § 54-388 (§ 54.1-3215).

~~§ 54.1-3217. § 54-388.1. Proceedings for revocation or suspension of certificate or censure of holder .— A. The provisions of the Administrative Process Act (9-6.14:1, et seq.) shall govern proceedings to revoke or suspend a certificate issued by the Board or to censure the holder of such a certificate .~~

~~B. Allegations that a cause set forth in § 54-388 exists against a licensee shall be made in writing to the Board.~~

~~C. The Board may suspend a certificate license issued by it pending a hearing when the danger to the public health or safety warrants such action , without a hearing simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety which warrants this action. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.~~

Drafting Note: There are no changes in the law. The general provisions note the requirement to adhere to the APA.

~~§ 54.1-3218. § 54-391. How obtaining new certificate license obtained after revocation.—A person whose certificate license has been revoked may, after the expiration of one year from the date of such revocation, apply for a new certificate license in the manner provided for original application ; and the . The Board may in its discretion exempt the applicant from examination and grant him a certificate license .~~

Drafting Note: There is no change in the law.

~~§ 54.1-3219. § 54-394.1. Continuing education.—As a prerequisite to annual renewal of a certificate of registration license or reinstatement of such certificate as provided in § 54-391 a license , each optometrist now or hereafter licensed under this chapter shall be required to take annual courses of study in subjects relating to optometry as approved by the Board ; including, but not . The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of research. The Board shall prescribe ; by rule and regulation, criteria for approval of courses of study and credit hour requirements ; provided, however, that . However, the required number of credit hours shall not exceed sixteen in any one calendar year. The Board may approve alternate alternative courses of study upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each registered licensed optometrist at the time he makes application applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.~~

Drafting Note: There is no change in the law.

~~§ 54-395. How fees applied. The funds realized from the aforesaid fees shall be applied to the payment of all necessary expenses of the Board.~~

Drafting Note: Section 54.1-2505 covers fees and how they are accounted.

~~§ 54-398. Commonwealth's attorneys to prosecute violations; employment of counsel. It shall be the duty of the respective Commonwealth's attorneys to prosecute all cases arising under this chapter; but the Board may employ additional counsel from time to time when necessary, upon recommendation of the Attorney General and with the written consent of the Governor obtained in advance, to be paid only out of funds arising from the receipts of the Board when appropriated for this purpose by law.~~

Drafting Note: This section is no longer necessary.

Article 4.

Certification for Administration

of Diagnostic

Pharmaceutical Agents.

~~§ 54.1-3220. § 54-386.1. Certification for administration of diagnostic pharmaceutical agents.—In order to become certified to administer diagnostic pharmaceutical agents for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures, an optometrist shall:~~

1. Complete successfully a Board-approved course in general and ocular pharmacology as it relates to the practice of optometry which shall consist of at least fifty-five classroom hours including a minimum of fifteen classroom hours in general pharmacology, twenty classroom hours in ocular pharmacology and twenty classroom hours of clinical laboratory presented by a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post Secondary Accreditation or by the United States Department of Education.

2. Pass a Board - administered, performance-based examination on general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents as defined in § 54-386.2 *this article*.

Drafting Note: There are no changes.

§ 54.1-3221. ~~§ 54-386.2.~~ "Diagnostic pharmaceutical agents" defined; utilization; acquisition.—A. Certified optometrists may administer diagnostic pharmaceutical agents only by topical application to the human eye. "Diagnostic pharmaceutical agents" shall be defined as the following drugs in strengths not to exceed those stated:

1. Mydriatics and cycloplegics known as tropicamide in a 1.0% solution, phenylephrine hydrochloride in a 2.5% solution and cyclopentolate hydrochloride in a 1.0% solution to be used only on persons three years of age or older;

2. Anesthetic agents known as proparacaine hydrochloride in a 0.5% solution, tetracaine in a 0.5% solution and benoxinate hydrochloride in a 0.4% solution; and

3. The miotic known as pilocarpine in a 1.0% solution.

B. Any optometrist who utilizes diagnostic pharmaceutical agents without being certified as provided in § 54-386.1 *required by this article* shall be subject to the disciplinary sanctions provided in § 54-388 *this chapter*.

C. Licensed drug suppliers or pharmacists are authorized to supply optometrists with diagnostic pharmaceutical agents upon presentation of evidence of Board certification for administration of such drugs.

Drafting Note: There is no change in the law.

CHAPTER 33.

PHARMACY.

Article 1.

General Provisions.

§ 54.1-3300. *Definitions.—As used in this chapter unless the context requires a different meaning:*

"Board" means the Board of Pharmacy.

"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for delivery.

"Pharmacist" means a person holding a license issued by the Board to practice pharmacy.

"Pharmacy" means every establishment or institution in which the practice of pharmacy is conducted; drugs, medicines or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any similar words intended to indicate that the practice of pharmacy is being conducted.

"Practice of pharmacy" means the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs,

the maintenance of proper records and the responsibility of providing information concerning drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease.

Other terms used in the context of this chapter shall be defined as provided in Chapter 34 (§ 54.1-3400 et seq.) of this title unless the context requires a different meaning.

Drafting Note: These definitions are lifted from the "Drug Control Act." There is no change in the law.

§ 54-524.53. Physicians, dentists, and veterinarians supplying medicine for patients.—This chapter shall not be construed to interfere with any legally qualified practitioner of medicine, dentistry, osteopathy, chiropody (podiatry), or veterinary medicine, who is not the proprietor of a store for the dispensing or retailing of drugs, or who is not in the employ of such a proprietor, in the compounding of his own prescriptions or the purchase and possession of such drugs and medicines as he may require, or to prevent him from administering or supplying to his patients such medicines as he may deem proper, or from making a charge for such medicines as are not sold to his patients for his own convenience or for the purpose of supplementing his income, nor with the sale by merchants and retail dealers of proprietary medicines as defined in this chapter, provided that nothing herein shall be construed to exempt any such person from the registration requirements of §§ 54-524.47:2 or 54-524.47:3 or the record requirement of § 54-524.56.

§ 54-524.54. Mechanical devices for dispensing drugs.—Nothing in this article shall be construed to prevent the operation of mechanical devices used in hospitals for the dispensing of drugs for which the Board has prescribed standards of operation.

§ 54.1-3301. Exceptions.—This chapter shall not be construed to:

1. Interfere with any legally qualified practitioner of medicine, dentistry, osteopathy, podiatry, or veterinary medicine in the compounding of his prescriptions or the purchase and possession of drugs as he may require;

2. Prevent any legally qualified practitioner of medicine, dentistry, osteopathy, podiatry, or veterinary medicine from administering or supplying to his patients the medicines that he deems proper under the conditions of § 54.1-3303;

3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34 (§ 54.1-3400 et seq.) of this title; or

4. Prevent the operation of mechanical devices in hospitals for the dispensing of drugs for which the Board has prescribed standards of operation.

5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the regulations of the Board.

This section shall not be construed as exempting any person from the licensure, registration, permitting and record keeping requirements of this chapter or Chapter 34 of this title.

Drafting Note: This section consolidates the exceptions in §§ 54-524.53 and 54-524.54. There is no change in the law.

§ 54.1-3302. Restrictions on practitioners of the healing arts.—A practitioner of the healing arts who is authorized to dispense, administer or prescribe drugs shall not sell drugs to anyone other than his patients or sell drugs to his own patients either for his own convenience, or for the purpose of supplementing his income unless he is licensed to practice pharmacy.

Drafting Note: This section is the revised language from §§ 54-317(12) and 54-524.53. See § 54.1-2914 B.

§ 54.1-3303. § 54-524.50:1. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.—A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances. The prescription must shall be issued for a medicinal or an accepted therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide physician-patient relationship.

For purposes of this section, a bona fide physician-patient-pharmacist relationship is one in which a physician prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or accepted therapeutic purpose within the course of his professional practice. Any practitioner who prescribes any controlled substance with the knowledge that the

controlled substance will be used otherwise than medicinally or for accepted therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 of this Code for violations of the provisions of law relating to the distribution or possession of controlled substances.

B. No prescription shall be filled which does not result from a bona fide physician-patient-pharmacist relationship. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription.

In order to determine whether a prescription which appears questionable to the pharmacist results from a bona fide physician-patient-pharmacist relationship, the pharmacist shall contact the prescribing physician or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of controlled substances.

C. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such prescription if the prescription complies with the requirements of Chapter 15-1 (§ 54-524.1 et seq.) of Title 54 of the Code of Virginia *this chapter and Chapter 34 (§ 54.1-3400 et seq.) of this title*, known as the "Drug Control Act."

Drafting Note: There is no change in the law.

~~§ 54.1-3304. § 54-524.34:1. Licensing of physicians to dispense drugs; renewals.~~—For good cause shown, the Board may grant a license to any physician licensed under the laws of Virginia which license shall authorize *authorizing* such physician to dispense drugs to persons to whom a pharmaceutical service is not reasonably available ; ~~such~~ . *This* license may be renewed annually in which event the Board shall charge a fee determined by the Board for the issuance of each such license or renewal thereof; ~~such~~ . Any physician or osteopath *so licensed* shall be governed by the regulations of the Board of Pharmacy when applicable.

Drafting Note: There is no change in the law.

Article 2.

Board of Pharmacy.

~~§ 54.1-3305. § 54-524.5. Board continued ; membership; terms; meetings; quorum; officers .—~~The State Board of Pharmacy, in this chapter sometimes called the Board, is continued.

~~§ 54-524.6. Appointment and qualifications of members; terms and vacancies.—~~ The Board of Pharmacy shall consist of six members, *as follows*: five of whom shall be registered licensed pharmacists and graduates of an approved school or college of pharmacy ; to be appointed by the Governor, each for a term of five years from June 30 of the year of appointment. Their terms shall continue to be so arranged that the term of one of them expires each year. In addition, *and* one citizen member shall be appointed to the Board for a term of five years. All vacancies occurring on the Board shall be filled by the Governor .

~~§ 54-524.13. Meetings of Board; quorum.—~~ The Board shall hold its annual meetings in June, in the City of Richmond, Virginia, and such other meetings *meet at least annually* at such times and places, and upon such notice as the Board may determine and as its business may require. Four members of the Board shall constitute a quorum for the transaction of business.

~~§ 54-524.11. Officers and terms of office.—~~There shall be a chairman of the Board, who shall be selected by the *The Board shall annually elect* from its own members ; an executive director who shall be someone other than a member of the Board, qualified under the Personnel Act, selected by the lawful Board at time of selection to serve as their executive officer *a chairman* . The chairman shall hold office for a period of one year from his election and qualification, or until his successor is elected and qualified. The tenure of office of the executive director shall be the same as that for State classified personnel under the State Personnel Act.

~~§ 54-524.8. Oath of office.—~~ Every person appointed a member of the Board shall, before entering upon the duties of his office, take the oath of office before some officer authorized to administer an oath, and file the certificate of the oath with the executive director of the Board.

~~§ 54-524.9. Limitation on number of terms.—~~No person shall be eligible to serve for or during more than two successive terms, and incumbency during the term in force on June 24, 1944, constitutes the first of the two successive terms with respect to eligibility for appointment.

~~§ 54-524.10. Removal of members.—The Governor may remove any member of the Board for misconduct, incapacity or neglect of duty and he shall be the sole judge of the sufficiency of the cause for removal. He shall report every such removal at once to the General Assembly if it is in session, and if not, at the beginning of the next session.~~

~~§ 54-524.14. Expenses of Board.—The expenses incurred by the Board in the discharge of the duties imposed upon it shall be paid out of the treasury of the Commonwealth.~~

Drafting Note: This section consolidates §§ 54-524.5, 54-524.8, 54-524.9, 54-524.10, 54-524.11 and 54-524.13. The struck sections are covered in general provisions (See § 54.1-107 which refers to § 2.1-43).

~~§ 54.1-3306. § 54-524.7. Nominations by Virginia Pharmaceutical Association .— Each professional appointment to the Board Nominations may be made for each professional vacancy from a list of at least five three names for each vacancy sent submitted to the Governor by the Virginia Pharmaceutical Association. Nominations are to be made to the Governor by June 1 of each year. The Governor may notify the Association promptly of any professional vacancy other than by expiration and like nominations may be made for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees of the Association.~~

Drafting Note: All sections on nominations are being conformed.

~~§ 54.1-3307. § 54-524.16. Specific powers and duties of Board generally .—The Board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or other disposal of drugs, cosmetics and devices ; . The Board shall also control the character and standard of all drugs, cosmetics and devices within the State Commonwealth , investigate all complaints as to the quality and strength of all drugs, cosmetics, and devices and take such action as may be necessary to prevent the manufacturing, dispensing, selling, distributing, processing, compounding and other disposal of such drugs, cosmetics and devices as which do not conform to the requirement requirements of law and in . In so regulating the Board shall consider any of the following criteria as they are applicable:~~

~~(a) 1. Maintenance of the quality, quantity, integrity, safety and efficacy of drugs or devices distributed, dispensed or administered.~~

~~(b) 2. Compliance with the prescriber's instructions regarding the drug, its quantity, quality and directions for use.~~

~~(c) 3. Requiring Controls and safeguards against diversion of drugs or devices.~~

~~(d) 4. Maintaining Maintenance of the integrity of, and public confidence in, the profession and improving the delivery of quality pharmaceutical services to the citizens of Virginia.~~

~~(e) 5. The Maintenance of complete records of the nature, quantity or quality of drugs or substances distributed or dispensed, of all transactions involving controlled substances or drugs or devices so as to provide adequate information to the patient, the practitioner or the Board.~~

~~(f) 6. Control of factors contributing to abuse of legitimately obtained drugs, devices, or controlled substances.~~

~~(g) 7. The Promotion of scientific or technical advances in the practice of pharmacy and the manufacture and distribution of controlled drugs, devices or substances.~~

~~(h) 8. Such other factors as may be relevant to, and consistent with, the public health and safety.~~

~~The Board may engage and pay for such professional and other services as it may deem necessary in investigating violations of the law, and the enforcement of its provisions. The Board may transact all business relating to the practice of pharmacy.~~

~~The Board shall set by regulation the fee or fees required for the issuance of any license, permit or registration that the Board is authorized to issue pursuant to this chapter. The Board may fix a monetary penalty for the delinquent payment of any such fee or fees.~~

~~§ 54-524.18. Collection and examination of specimens.—~~

~~The Board may collect and examine specimens of drugs, devices and cosmetics which are manufactured, stored or dispensed in this State Commonwealth .~~

Drafting Note: The struck provisions are not necessary (See §§ 54.1-2400, 54.1-2401 and

54.1-2505).

§ 54-524.17. ~~Bylaws, rules and regulations.~~—The Board may, subject to the provisions of Chapter 1-1 (§ 9-6.1 et seq.) of Title 9, of the Code, make such bylaws, rules and regulations, not inconsistent with the laws of the State, as may be necessary for the lawful exercise of its powers. Copies of such rules and regulations or bylaws which have been certified by the executive director of the Board shall be accepted as competent evidence in a court of law and shall be deemed prima facie evidence of compliance with all of the provisions of law regarding their promulgation by the Board.

Drafting Note: This section is not necessary because of the general provisions (See §§ 54.1-112 and 54.1-2400).

§ 54.1-3308. § 54-524.19. Power of inspection.—The members of the Board and their duly authorized agents shall have the power to inspect in a lawful manner the drugs, cosmetics and devices which are manufactured, stored or dispensed in the State, and for Commonwealth. For this purpose the Board shall have the right to enter and inspect during business hours any pharmacy, or any other place in the State of Virginia where drugs, cosmetics or devices are manufactured, stored or dispensed. The Board shall report any evidence of violation of the provisions of this chapter or Chapter 34 (§ 54.1-3400 et seq.) of this title by practitioners for action by to the appropriate licensing board ; and such . The report shall constitute a pending complaint upon which the appropriate licensing board shall initiate action within thirty days.

Drafting Note: There is no change in the law.

§ 54.1-3309. § 54-524.00. Enforcement. — (a) For purposes of enforcement of this chapter, the A. The Board or any of its authorized agents ; are authorized upon presenting appropriate credentials and a written notice as to the purpose of the inspection to the owner, operator or agent in charge (1) to enter at reasonable times any factory, warehouse or establishment in which drugs, devices or cosmetics are manufactured, processed, packed or held for introduction into commerce or after such introduction, or to enter any vehicle being used to transport or hold such drugs, devices or cosmetics in commeree; and (2) .

The Board or its agents are authorized to inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein .

In the case of any factory, warehouse, establishment or consulting laboratory in which prescription drugs are manufactured, processed, packed or held, the inspection shall extend to all things therein (. including records, files, papers, processes, controls and facilities) , bearing on whether prescription drugs which are adulterated or misbranded within the meaning of this chapter or which may not be manufactured, introduced into commeree or sold or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported or held in any such place or otherwise bearing on violation of this chapter compliance with Chapter 34 (§ 54.1-3400 et seq.) of this title .

No inspection authorized for prescription drugs by the preceding sentence shall extend to (A) financial data, (B) sales data other than shipment data, (C) pricing data, (D) personnel data (, other than data as to qualifications of technical and professional personnel performing functions subject to this chapter) , and (E) research data.

Such Each inspection shall be commenced and completed with reasonable promptness ; (3) to . The Board or its agents shall have access to and to copy all records of carriers in commerce showing the movement in commerce of any drug, device, or cosmetic ; or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; provided, that . The evidence obtained under this subsection section shall not be used in a criminal prosecution of the person from whom obtained; and provided further, that carriers shall not be subject to the other provisions of this chapter Chapter 34 by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as earriers .

(b) B. If the authorized agent making any such inspection of inspecting a factory, warehouse or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained .

Drafting Note: There is no change in the law.

§ 54-524.12. Bond of executive director.—The executive director of the Board shall give bond for the faithful performance of the duties of his office in such penalty and with such security as may be approved by the Board.

~~§ 54-524.15. Salary of executive director.—The salary of the executive director shall be fixed by the Board subject to provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1.~~

Drafting Note: Employees of the Department are subject to the requirements of state personnel policies. Therefore, these sections are struck.

Article 3.

Licensure of Pharmacists.

~~§ 54.1-3310. § 54-524.48. Dispensing or compounding drugs except in compliance with chapter Unlawful to practice without license .—Except as prescribed in this chapter or by Board regulations it shall be unlawful for any person to practice as a pharmacist pharmacy , or to engage in, carry on, or be employed in the dispensing, or compounding of drugs within this State; the Commonwealth unless licensed by the Board as a pharmacist. The possession by any person in any place of a miscellaneous stock of drugs shall be prima facie evidence that such person is practicing pharmacy.~~

Drafting Note: There is no change in the law.

~~§ 54.1-3311. § 54-524.25. Issuance of license Application and examination .— The Board may issue a license to be known as that of “pharmacist.” If the applicant has complied with all the requirements of this article, the Board shall enroll his name upon the register of pharmacists and issue him such license.~~

~~§ 54-524.23. Applicant to be licensed as pharmacist; fee. Every person desiring to be licensed by examination as a pharmacist shall file with the executive director of the Board an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which, and the time spent in, the study of the science and art of pharmacy, and other information required by the Board.~~

~~Every applicant for original licensure by examination as a pharmacist shall pay to the executive director of the Board a fee determined by the Board.~~

~~§ 54-524.24. Examination of applicant.— The applicant for licensure by examination as a pharmacist shall appear at the time and place designated by the Board and submit to an examination as to his qualifications for such licensure. The Board shall conduct examinations of applicants for licensure when so determined by the Board, and not less frequently than at least twice a calendar year.~~

~~§ 54-524.27. Annual renewal of license; fee.— The Board shall also require and provide for the annual renewal of every pharmacist’s license in this State, and charge and receive a fee determined by the Board for each such renewal.~~

Drafting Note: This section consolidates §§ 54-524.23, 54-524.24, 54-524.25 and 54-524.27. Authority for fee setting is provided in § 54.1-2400. Other redundant language has also been removed.

~~§ 54.1-3312. § 54-524.21. Qualifications of pharmacist; approved school of pharmacy defined.— A. In order to be licensed and registered as a pharmacist within the meaning of this chapter, an applicant shall present to the Board satisfactory evidence that he is :~~

- ~~1. Is at least eighteen years of age;~~
- ~~2. Is of good moral character; that he is~~
- ~~3. Is a graduate in pharmacy of a school of pharmacy approved by the State Board of Pharmacy; and that he has~~
- ~~4. Has had a suitable period of experience acceptable to the Board; and he must pass and~~
- ~~5. Has passed the examination prescribed by the Board.~~

~~B. The period of practical experience required under this section shall not exceed twelve months. As used in this article, an approved school of pharmacy shall be an institution which meets the minimum standards of the American Council on Pharmaceutical Education and which appears on the Council’s list of schools of pharmacy as published on an annual basis by the American Council on Pharmaceutical Education annually .~~

Drafting Note: There is no change in the law.

~~§ 54.1-3313. § 54-524.26. Temporary or probationary licenses ; fee .—The Board of Pharmacy~~

may issue temporary or probationary licenses to practice pharmacy in this State for a period of not less than one year, without examination, to such persons as have been legally licensed and who hold a current license as pharmacists in other states, the District of Columbia and or possessions or territories of the United States ; provided that the . The applicant for such license shall present satisfactory evidence of the qualifications equal to those required of applicants for licensure by examination in this State Virginia and that he was licensed by examination by the board of pharmacy in such other state, District or territory ; and that the jurisdiction. The standard of competence required in such other state, District or territory ; is jurisdiction shall not be lower than that required in this State; provided, further, that the Virginia. The Board may issue a regular license at the end of one year of practice to those applicants whose qualifications are in accordance with the regulations established by the Board.

The fee for issuance of such a license shall be determined by the Board and shall be forwarded by applicants with their applications to the executive director of the Board.

Drafting Note: There is no change in the law. Reciprocity authority is provided in § 54.1-103; however, this section does not appear to address such agreements.

§ 54.1-3314. § 54-524.30. Display of license.—Every person licensed to practice as a pharmacist must at all times display his license conspicuously in the place in which he regularly practices under such license .

Drafting Note: There is no change in the law.

§ 54-524.29. Recognition and recording of licenses.—The Board of Pharmacy shall recognize all licenses issued by former boards of this State and make and keep a record of all licenses issued by it. Such records shall be open to inspection by any citizen of this State.

Drafting Note: This section is unnecessary.

§ 54.1-3315. § 54-524.35. When pharmacist considered guilty of Unprofessional conduct.—Any pharmacist shall be considered guilty of unprofessional conduct who (1) is :

1. Is found guilty convicted of any crime involving grave moral turpitude ; or is guilty of fraud or deceit in obtaining a certificate of registration ; or (2) issues;

2. Issues or publishes ; broadcasts by radio, or otherwise, or distributes or uses in any way whatsoever advertising matter in which statements are made about his professional service which have a tendency to are intended to deceive or defraud the public , or are contrary to the public health and welfare.

Drafting Note: There is no change in the law. Redundant language has been struck.

§ 54.1-3316. § 54-524.22:1. Refusal to grant and ; revocation of license or permit ; imposition of civil monetary penalty ; suspension and denial .—The Board of Pharmacy may revoke, suspend or refuse to issue or renew any license, permit, or registration of an applicant or licensee and/or may impose a civil monetary penalty as provided for in § 18.2-261 or may deny any application if it finds that the applicant :

(a) [Repealed.]

(b) 1. He Has been negligent in the practice of pharmacy ; manufacturing or distributing ;

(c) 2. He Has been guilty of unprofessional conduct as prescribed in § 54-524.35 ;

(d) 3. He shall Has become incompetent to practice pharmacy or wholesale or manufacture or distribute because of his mental or physical condition;

(e) 4. He Uses drugs or intoxicating liquors alcohol to the extent that he is unfit for the performance of his professional obligations and duties rendered unsafe to practice pharmacy ;

(f) [Repealed.]

(g) 5. He Has engaged in or attempted any fraud or deceit upon the consumer, practitioner or the Board in connection with the practice of pharmacy or manufacturing or wholesaling ;

(h) 6. He Has assisted or allowed unlicensed persons to engage in the practice of pharmacy ; or manufacturing or wholesaling except as provided by this chapter or regulations of the Board ;

(i) 7. He Has violated or cooperated with others in violating any provisions of law relating to practice of pharmacy ; the manufacturing, distributing or dispensing of any drugs, or of any

regulation of the Board;

~~(j)~~ 8. ~~Has had~~ his federal registration to ~~manufacture, distribute or dispense~~ controlled substances ~~has been~~ revoked or suspended; ~~or~~

~~(k)~~ 9. ~~He~~ Has been convicted of violating any federal drug law or any drug law of Virginia or of another state or has had his license to practice pharmacy suspended or revoked in any other state.

No such license shall be suspended or revoked except as provided in § 54-524.22:2 until the licensee or permittee has been given reasonable notice and an opportunity to be heard in accordance with Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code, and which action by the Board shall be in addition to any punishment imposed by law for such violation.

Drafting Note: The APA is applicable to all disciplinary proceedings through the general provisions for the title.

§ 54.1-3317. ~~§ 54-524.22:2.~~ Suspension of license pending hearing; suspension or revocation for drug conviction.—A. The Board may suspend the license of any person licensed under this chapter, without a hearing simultaneously with the institution of proceedings for a hearing, if it finds that there is an imminent danger to the public health or safety which warrants this action.

B. The Board may ~~forthwith~~ suspend or revoke, without a hearing, the license of any person licensed under this chapter, upon receipt of a certified copy of the judgment of conviction of ~~said~~ the licensee for any felony involving federal or state drug laws. Any person whose license is revoked or suspended pursuant to this subsection shall, at reasonable intervals, be afforded an opportunity to demonstrate that ~~such person~~ he can resume the competent practice of pharmacy with reasonable skill and safety to the public.

C. The Board may take action to summarily suspend a practitioner's license under this section by means of a telephone conference call if, in the opinion of a majority of the Board, (i) a good faith effort to convene a regular meeting of the Board has failed, and (ii) there is an imminent danger to the public health or safety which warrants this action.

Drafting Note: There is no change in the law.

§ 54.1-3318. ~~§ 54-524.28.~~ Notification of revocation.—Whenever the Board ~~shall revoke~~ *revokes* the license of any pharmacist, it shall notify the ~~licensed person~~ *licensee* of such action, and he shall immediately deliver his license to the Board ; or its representative.

Drafting Note: There is no change in the law.

CHAPTER 34.

DRUG CONTROL ACT.

Article 1.

General Provisions.

§ 54.1-3400. ~~§ 54-524.1.~~ Citation.—This chapter may be cited as “The Drug Control Act.”

Drafting Note: There is no change in the law.

§ 54.1-3401. ~~§ 54-524.2.~~ Legislative finding; Definitions.— (a) ~~Finding.~~ - The practice of pharmacy in the State of Virginia is declared a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest.

~~(b) Definitions.~~ - As used in this chapter, unless the context ~~otherwise indicates~~ *requires a different meaning* :

~~(1)~~“Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by : (i) a practitioner ~~(or by his authorized agent and under his direction)~~ , or (ii) the patient or research subject at the direction and in the presence of the practitioner.

~~(2)~~“Advertisement” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.

~~(3)~~“Animal” means any *nonhuman* animate being ; ~~which is not human,~~ endowed with the power of voluntary action.

~~(3a)~~ "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

~~(4)~~ "Board" means the State Board of Pharmacy.

~~(4a)~~ "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

~~(5)~~ "Compound" means the taking of two or more ingredients and fabricating them into a single preparation, usually referred to as a dosage form.

~~(6)~~ "Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of Article 6-1 (§ 54-524.84-1 et seq.) of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.1 (§ 3.1-1 et seq.) or Title 4 (§ 4-1 et seq.) of the Code of Virginia.

~~(7)~~ "Cosmetic" means all ~~(a)~~ articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and ~~(b)~~ articles intended for use as a component of any such articles ; except that such term shall not include soap.

~~(8)~~ "Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.

~~(9)~~ "Device" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended ~~(1)~~ for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals ; or ~~(2)~~ to affect the structure or any function of the body of man or other animals.

~~(10)~~ "Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

~~(10a)~~ "Dispenser" means a practitioner who dispenses.

~~(11)~~ "Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

~~(12)~~ "Drug" means ~~(a)~~ (i) articles or substances recognized in the official United States Pharmacopoeia ; and *National Formulary* or official Homeopathic Pharmacopoeia of the United States ; or *official National Formulary* , or any supplement to any of them; ~~(b)~~ (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; ~~(c)~~ (iii) ~~article~~ articles or substances, other than food, intended to affect the structure or any function of the body of man or other animals; or ~~(d)~~ (iv) articles or substances intended for use as a component of any article specified in clause ~~(a)~~, ~~(b)~~ or ~~(c)~~ (i), (ii) or (iii) ; ~~but~~ . "Drug" does not include devices or their components, parts or accessories.

"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than twelve percent by weight.

~~(12a)~~ "Immediate precursor" means a substance which the Board of Pharmacy has found to be and by ~~rule~~ regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

~~(13)~~ "Label" means a display of written, printed or graphic matter upon the immediate container of any article ; ~~and~~ . A requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any ~~there be~~ , of the retail package of such article, or is easily legible through the outside container or wrapper.

~~(14)~~ "Labeling" means all labels and other written, printed or graphic matter ~~(a)~~ ~~upon~~ on an

article or any of its containers or wrappers, or ~~(b)~~ accompanying such article.

~~(14a)~~“Manufacture” means the production, preparation, propagation, compounding, conversion or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container ; ~~except that~~ . This term does not include the preparing, compounding, packaging or labeling of a controlled substance : ~~(1)~~ by a practitioner as an incident to his administering or dispensing of a controlled substance or marijuana in the course of his professional practice, or ~~(2)~~ by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~(15)~~“Manufacturer” means every person who manufactures.

~~(16)~~“Marijuana” means any part of a plant of the genus *Cannabis* whether growing or not ; ~~and the , its seeds or resin thereof ; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin ; but .~~ *Marijuana* shall not include any oily extract containing one or more cannabinoids ~~unless if such extract shall contain~~ *contains* less than twelve percent of tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

“Hashish oil” means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than twelve percent by weight.

~~(17)~~“Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: ~~(a)~~ (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; ~~(b)~~ (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause ~~(a)~~ (i) , but not including the isoquinoline alkaloids of opium; ~~(c)~~ (iii) opium poppy and poppy straw; ~~(d)~~ (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

~~(17a)~~“New drug” means: ~~(a)~~ (i) any drug ~~(, except a new animal drug or an animal feed bearing or containing a new animal drug)~~ , the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling ~~thereof~~ , except that such a drug not so recognized shall not be deemed to be a “new drug” if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or ~~(b)~~ (ii) any drug ~~(, except a new animal drug or an animal feed bearing or containing a new animal drug)~~ , the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

~~(18)~~“Official compendium” means the official United States Pharmacopoeia *and National Formulary* , official Homeopathic Pharmacopoeia of the United States, ~~official National Formulary~~, or any supplement to any of them.

~~(19)~~“Official written order” means an order written on a form provided for that purpose by the United States Bureau of Narcotics and Dangerous Drugs, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the State Board of Pharmacy.

~~(20)~~“Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 6-1 (~~§ 54-524.84-1 et seq.~~) 4 (~~§ 54.1-3437 et seq.~~) of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its

racemic and levorotatory forms.

(21) "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

(22) "Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

(23) "Person" shall be construed to import *means* both the plural and singular, as the case demands, and includes individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

(24) "Pharmacist" means a natural person who holds a valid license issued by the Board to practice pharmacy under the laws of this State.

(25) "Pharmacy" shall mean and include every establishment or institution where (a) the practice of pharmacy is conducted; (b) drugs, medicines or medicinal chemicals are dispensed, offered for sale, given away or displayed for sale at retail; (c) where prescriptions are compounded or dispensed; or (d) which has upon it or displayed within it or affixed to or used in connection with it, a sign bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any word or words of similar or like import, or with respect to which any of the above words are used in any advertisement, the effect of which would tend to indicate that the practice of pharmacy is being conducted in such establishment.

(26) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(26a) "Practice of pharmacy" is the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs, the maintenance of proper records therefor, and the responsibility of providing information, as required, concerning such drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease.

The words "drug" and "devices," as used in this definition, shall not include surgical or dental instruments, physical therapy equipment, X-rays apparatus, their component parts or accessories or glasses or lenses for the eyes.

The "practice of pharmacy" shall not include the operations of a manufacturer or wholesaler.

(27) "Practitioner" means : A a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this State *Commonwealth* .

(28) "Prescription" shall mean and include *means* an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian or other practitioner, authorized by law to prescribe and administer such drugs or medical supplies.

(29) "Production" or "produce" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance or marijuana.

(30) "Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor thereof , under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law ; ~~provided that~~ . However, this definition shall not include (a) a drug which is only advertised or promoted professionally to licensed practitioners, (b) a narcotic or drug containing a narcotic, (c) a drug which may be dispensed only upon prescription or the label of which bears substantially the statement "Warning - may be habit-forming," or (d) a drug intended for injection.

~~(31)~~ "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as individual, proprietor, agent, servant or employee.

~~(32)~~ "Wholesaler" or "distributor" means every person, except a manufacturer, engaged in the business of distributing, supplying, selling or otherwise disposing of drugs, cosmetics or devices to any person who is not the ultimate user or consumer ; ~~provided that no~~ . No person shall be subject to any state or local tax as a wholesale merchant by reason of this definition.

The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) of this title and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus or glasses or lenses for the eyes.

The terms "pharmacist", "pharmacy" and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 of this title unless the context requires a different meaning.

Drafting note: Although this section has been revised, no change in the law is intended.

§ 54.1-3402. ~~§ 54-524.47.~~ Proprietor of pharmacy exempted.— ~~Nothing in this~~ This article shall not be construed to require the proprietor of a pharmacy to register as a manufacturer or distributor if the products manufactured or purchased are labeled under the name of the pharmacy and dispensed within the premises and not sold for distribution and resale outside the premises.

Drafting Note: There is no change in the law.

§ 54.1-3403. ~~§ 54-524.4.~~ Chapter not applicable to economic poisons.— ~~Nothing in this~~ This chapter shall not be construed to apply (i) to economic poisons used for the control of insects, animal pests, weeds, fungus diseases or other substances sold for use in agricultural, horticultural or related arts and sciences ~~(provided when such substances which are poisons within the meaning of this chapter are sold in original unbroken packages bearing a label having plainly printed upon it the name of the contents and the word POISON and an effective antidote) nor~~ or (ii) to any person, persons, corporations or associations engaged in the business of selling, making, compounding or manufacturing industrial chemicals for distribution or sale at wholesale or for making, compounding or manufacturing other products ~~therefrom~~ .

Drafting Note: There is no change in the law.

§ 54.1-3404. ~~§ 54-524.56.~~ Persons required to keep record of drugs; contents and form of record.— ~~(a) [Repealed.]~~

~~(a1)~~ On May 1, 1979, each A. Every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs ~~on hand on the date he first engages in business~~ . An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date. ~~Inventories taken after July 1, 1980, shall be dated and signed.~~

4 ~~(a2)~~ Every person described herein who was not in business on May 1, 1979, shall prepare a complete and accurate inventory of all stocks of Schedule I through V drugs on such date as he first engages in business pursuant to the provisions of subsection ~~(a1)~~ hereof.

~~(a2)~~ B. Every two years following the date on which the initial inventory is taken pursuant to subsections ~~(a1)~~ or ~~(a2)~~ hereof , every person described herein shall take a new inventory of all stocks of Schedules I through V drugs ~~on hand~~ . The biennial inventory shall be taken (i) on the day of the year in which the initial inventory was taken; or (ii) on the date of the person's regular general physical inventory, if any, which date is nearest to and does not vary by more than six months from the biennial date that would otherwise apply; or (iii) on any other fixed date which does not vary by more than six months from the biennial date that would otherwise apply. If the person elects to take the biennial inventory on his regular general physical inventory date or another fixed date, he shall notify the Board of his election and of the date on which the biennial inventory will be taken.

~~(b)~~ C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received ; , the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture ; ~~and the~~ . The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

~~(d)~~ D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs ; and . Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen ; if any , the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. ~~(e)~~ The form of records shall be prescribed by the Board.

~~(d)~~ E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I-V I through V drugs.

Within thirty days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.

~~(e)~~ F. All records required pursuant to this section shall be maintained completely and accurately for a period of two years from the date of the transaction recorded.

Drafting note: There is no change in the law.

§ 54.1-3405. ~~§ 54-524.57~~. Access to and copies of records; inspections.—Every person required to prepare or obtain, and keep, records, and any carrier maintaining records with respect to any shipment containing any drug, and every person in charge ; or having custody ; of such records ; shall, upon request of an agent designated by the Board, permit such agent at reasonable times to have access to and copy such records.

For the purposes of verification of such records and of enforcement of this chapter, agents designated by the Board are authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of; and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling therein, and all things therein (, including records, files, papers, processes, controls, and facilities) , bearing on violation of this chapter; and to inventory and obtain samples of any stock of any such drugs therein and obtain samples of any such drug .

If a sample of any drug is thus obtained, the agent making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample obtained . No inspection authorized shall extend to financial data, sales data other than shipment data, pricing data, personnel data or research data.

Drafting Note: There is no change in the law.

§ 54.1-3406. ~~§ 54-524.58~~. Records confidential.—No agent of the Board having knowledge by virtue of his office of any prescriptions, papers, records, or stocks of drugs shall divulge such knowledge, except in connection with a criminal investigation authorized by the Attorney General or Commonwealth's attorney or with a prosecution or proceeding in court or before a licensing or registration regulatory board or officer, to which investigation, prosecution or proceeding the person to whom such prescriptions, papers or records relate is a subject or party. Nothing in this This section shall not be construed to prohibit the Board president or his designee and the Director of the Department of Health Regulatory Boards Regulation from discharging their duties as provided in paragraph L of § 54-955 this title .

Drafting note: There is no change in the law.

§ 54.1-3407. ~~§ 54-524.59:1~~. Licensed physician or pharmacist to mail or deliver Analysis of controlled substances received for analysis to state laboratory .—A licensed physician or pharmacist may receive controlled substances from or on behalf of a patient for qualitative or quantitative analysis purposes only, without an official order form, provided that if within twenty-four hours of its receipt the physician or pharmacist shall mail or deliver mails or delivers the entire sample to a laboratory operated by the Commonwealth and designated by the Board to receive such substances. If the sample is mailed, it shall be sent by registered or certified mail, postage prepaid, with return receipt requested ; if . If personally delivered, he shall obtain a receipt shall be obtained from such laboratory ; all such . All receipts or returns shall be kept on file for three years and shall be available for inspection by the Board at any

reasonable time.

Drafting Note: There is no change in the law.

~~§ 54.1-3408. § 54-524.65.~~ Professional use by practitioners.—A. A practitioner of medicine, osteopathy, podiatry or dentistry shall only prescribe, dispense or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice. The practitioner may prescribe, on a written prescription or on oral prescription as authorized by ~~§ 54-524.67 this chapter~~, and administer drugs and devices, or he may cause ~~the same them~~ to be administered by a nurse or intern under his direction and supervision, or a practitioner may prescribe and cause drugs and devices to be administered to patients in state-owned or *state-* operated hospitals or facilities licensed as ~~general~~ hospitals by the State Board of Health or psychiatric hospitals licensed by the ~~State Board of Mental Health and~~, Mental Retardation *and Substance Abuse Services Board* by other persons who have been trained to properly administer drugs and who administer drugs only under the control and supervision of the practitioner or a pharmacist.

No written prescription order form shall include more than one prescription. This provision shall not apply, however, to the entry of any order on a patient's chart in any hospital in Virginia or to a prescription ordered through the pharmacy operated by the Department of Corrections or the central pharmacy of the Department of Health.

Such a prescription shall be written, dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the patient for whom the drug is prescribed, and the full name, address and registry number under the federal laws of the person prescribing, ~~provided~~ if he is required by those laws to be so registered.

This section shall not prevent the administration of drugs by an agent authorized in writing by the physician to administer such drugs, in accordance with such physician's instructions pertaining to dosage, frequency and manner of administration, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the ~~State Board of Mental Health and~~, Mental Retardation ~~Board and Substance Abuse Services~~ when the authorized agent administering the drugs has satisfactorily completed a training program for this purpose approved by the Board of Nursing ~~or~~; (ii) a resident of any home for adults which is licensed by the Department of Social Services; or (iii) a resident of the Virginia Rehabilitation Center for the Blind when the authorized agent administering the drugs has satisfactorily completed a training program specifically designed to meet the needs of such residents and approved by the Board of Nursing. a resident of a home for adults under this section shall be civilly liable for the actions of the person administering the medication, but this provision shall not relieve such physician from liability for his own negligence. This section shall not interfere with any practitioner issuing prescriptions in compliance with the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1 ; ~~such~~. ~~Such~~ prescriptions issued by such practitioner shall be deemed to be valid prescriptions. ~~Nothing in this~~ This section shall *not* prohibit a practitioner from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures and other information specified above are otherwise fulfilled.

B. The written prescription referred to in subsection A of this section shall be written with ink or individually typed and *each prescription* shall be manually signed by the practitioner ; ~~it~~. ~~The prescription~~ may be prepared by an agent for his signature. The prescription shall contain the name, address, telephone number, and federal controlled substances registration number assigned to the prescriber ; ~~such~~. ~~The prescriber's~~ information shall be either preprinted upon the prescription blank, typewritten, rubber stamped or printed by hand.

Drafting Note: There is no change in the law.

~~§ 54.1-3409. § 54-524.66.~~ Professional use by veterinarians.—A veterinarian may not prescribe controlled substances for human use and shall only prescribe, dispense or administer a controlled substance in good faith for use by animals within the course of his professional practice. He may prescribe, on a written prescription or on oral prescription as authorized by ~~§ 54-524.67, § 54.1-3410.~~ ; ~~and~~ He may administer drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the owner of the animal, and the species of the animal for which the drug is prescribed and the full name, address and registry number, under the federal laws of the person prescribing, ~~provided~~ if he is required by those laws to be so registered.

Drafting Note: There is no change in the law.

~~§ 54.1-3410. § 54-524.67.~~ When pharmacist may sell and dispense drugs.— A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a

prescription of a practitioner as follows:

~~(a)~~ 1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription ~~be is~~ for an animal, it shall state the species of animal for which the drug is prescribed ; ~~provided, however, that :~~ ;

~~(1)~~ 2. In emergency situations, as ~~prescribed by the Board by regulation not inconsistent with the federal law, such~~ Schedule II drugs may be dispensed pursuant to an oral prescription *in accordance with the Board's regulations* ;

~~(2)~~ 3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a practitioner, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the practitioner by whom the prescription was written; and such directions as may be stated on the prescription.

~~(b)~~ B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:

~~(1)~~ 1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and ~~bearing~~ bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription ~~be is~~ for an animal, it shall state the species of animal for which the drug is prescribed.

~~(2)~~ 2. If the prescription is oral, the practitioner shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.

~~(3)~~ A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in ~~paragraph (a) (2)~~ subdivision A 3 of this section.

~~(4)~~ C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber ; if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available ; and the patient's health would be in imminent danger without the benefits of ~~such~~ the drug. ~~Such a~~ The refill shall be made in compliance with the provisions of § 54-524.68 ~~(d)~~ § 54.1-3411 .

~~(5)~~ If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.

~~(6)~~ D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the *full* name of the agent of the prescriber transmitting the prescription.

Drafting note: There is no change in the law.

~~§ 54.1-3411. § 54-524.68.~~ When prescriptions may be refilled.—Prescriptions may be refilled as indicated follows :

~~(a)~~ 1. A prescription for a drug in Schedule II may not be refilled.

~~(b)~~ 2. A prescription for a drug in Schedules III or IV may not be filled or refilled more than six months after the date on which such prescription was issued and no such prescription may be authorized to be refilled, nor be refilled, more than five times, except that any prescription for such a drug after six months ~~after~~ from the date of issue, or after being refilled five times, may be renewed by the practitioner issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.

~~(c)~~ 3. A prescription in Schedule VI may not be refilled, unless authorized by the

practitioner either on the face of the original prescription or orally by the practitioner except as provided in ~~paragraph (d) subdivision 4~~ of this section. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.

~~(d)~~ 4. A prescription for a drug controlled by Schedule VI may be refilled without authorization from the prescriber ~~provided if~~ : ~~(1)~~ reasonable effort has been made to communicate with the prescriber, and the pharmacist has determined that he is not available; and ~~(2)~~ the patient's health would be in imminent danger without the benefits of ~~such~~ the drug. The pharmacist shall inform the patient of the prescriber's unavailability and that the refill is being made without his authorization. The pharmacist shall promptly inform the prescriber of such refill. The date and quantity of the refill, the prescriber's unavailability and the rationale for ~~such a~~ the refill shall be noted on the reverse side of the prescription.

Drafting Note: There is no change in the law.

~~§ 54.1-3412. § 54-524.69.~~ Date of dispensing; initials of pharmacist; automated data processing system.—The pharmacist dispensing any prescription shall record the date of dispensing and his initials on the prescription or in an automated data processing system used for the storage and retrieval of dispensing information for prescriptions pursuant to regulations promulgated by the Board.

Drafting Note: There is no change in the law.

~~§ 54.1-3413. § 54-524.58:1.~~ Manufacturing and administering Schedule I drugs.—It shall be lawful for a person to manufacture, and for a practitioner to administer, Schedule I drugs ~~provided if~~ :

~~(a)~~ 1. The manufacturer and practitioner are expressly authorized to engage in such activities by the Attorney General of the United States, or pursuant to the federal Food, Drug and Cosmetic Act; ~~and~~

~~(b)~~ 2. The manufacturer ~~and/~~ or dispenser is registered under all appropriate provisions of this chapter; ~~and~~

~~(c)~~ 3. ~~That~~ Any Schedule I drug so manufactured ~~must be~~ is sold or furnished on an official written order to a practitioner or other authorized person only; and

~~(d)~~ 4. The manufacturer and practitioner comply with all other requirements of this chapter.

Drafting Note: There is no change in the law.

~~§ 54.1-3414. § 54-524.60.~~ Official orders for Schedule II drugs.—An official written order for any Schedule II drug shall be signed by the purchasing ~~registrant licensee~~ or by his ~~duly~~ authorized agent. The original shall be presented to the person who supplies the drug or drugs ~~named therein~~ . ~~In event of the acceptance of such order by~~ If such person ~~accepts the order~~ , each party to the transaction shall preserve his copy of ~~such the~~ order for a ~~period of~~ three years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this ~~article~~ chapter . It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal laws ; respecting the requirements governing the use of order forms.

Drafting Note: There is no change in the law.

~~§ 54.1-3415. § 54-524.59.~~ Distribution of drugs in Schedules II through VI by manufacturers and wholesalers.— ~~(a)~~ A. A ~~duly licensed~~ ~~permitted~~ manufacturer or wholesaler may distribute Schedule II drugs to any of the following persons, but only on official written orders:

~~(1)~~ 1. To a manufacturer or wholesaler who has been issued permits pursuant to §§ 54-524.40 and 54-524.47:2 this chapter ;

~~(2)~~ 2. To a pharmacist;

~~(3)~~ 3. To a person who has been issued a controlled substance registration certificate pursuant to § 54-524.47:2 § 54.1-3422 , ~~provided~~ if the certificate of such person authorizes such purchase;

~~(4)~~ 4. On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;

~~(5)~~ 5. To a master of a ship or a person in charge of any aircraft upon which no physician

is regularly employed, for the actual medical needs of persons on board such ship or aircraft ; when not in port ; ~~provided, however, that~~ . However, such drugs shall be sold to a master of such ship or person in charge of such aircraft ~~only in pursuance of~~ pursuant to a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; and

~~(6)~~ 6. To a person in a foreign country ~~if in compliance with the provisions of the relevant federal laws are complied with~~ .

~~(b)~~ B. A ~~duly licensed~~ permitted manufacturer or wholesaler may distribute drugs classified in Schedule III through Schedule VI and devices to all persons listed in subsection ~~(a)~~ A of this section without an official written order. ~~Provided, however, that~~ However, this section shall not be construed to prohibit the distribution of a Schedule VI drug or device to any person who is otherwise authorized by law to administer, prescribe or dispense such drug or device.

Drafting Note: There is no change in the law.

§ 54.1-3416. ~~§ 54-524.75~~. No prescription for preparations listed pursuant to Schedule V.—A preparation listed pursuant to Schedule V may be dispensed without a prescription ; ~~provided if~~ :

~~(1)~~ That the 1. The preparation is dispensed only by a pharmacist directly to the person requesting the preparation;

~~(2)~~ That the 2. The preparation is dispensed only to a person who is at least eighteen ~~(18)~~ years of age;

~~(3)~~ That the 3. The pharmacist requires the person requesting the preparation to furnish suitable identification including proof of age when appropriate;

~~(4)~~ That the 4. The pharmacist does not dispense to any one person, or for the use of any one person or animal, any narcotic drug preparation or preparations, when he knows, or can by reasonable diligence ascertain, that such dispensing will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is dispensed, within 48 consecutive hours, with more than 200 milligrams of opium, or more than 270 milligrams of codeine, or more than 130 milligrams of dihydrocodeinone, or more than 65 milligrams of ethylmorphine, or more than 32 5/10 milligrams of diphenoxylate ; . ~~(5)~~ In dispensing such a narcotic drug preparation, the pharmacist shall exercise professional discretion to ~~insure~~ ensure that the preparation is being dispensed for medical purposes only;

~~(6)~~ Any pharmacist shall, at the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the preparation, the name and address of the person to whom the preparation is dispensed, and enter his initials thereon. Such records shall be maintained ~~pursuant to § 54-524.56~~ as set forth in § 54.1-3404 and the regulations of the Board .

Drafting Note: There is no change in the law.

§ 54.1-3417. ~~§ 54-524.61~~. Disposing of stocks of Schedules II through V drugs.—The owner of any stocks of drugs included in ~~Schedule~~ Schedules II through ~~Schedule~~ V obtained in compliance with this chapter, upon discontinuance of dealing in such drugs, may dispose of such stocks only on an official written order ~~in the manner described in this section and~~ as follows:

~~(1)~~ 1. A pharmacy or practitioner or an agent or agents of a pharmacy or practitioner under specific written authorization from the owner of such pharmacy or such practitioner, may dispose of such stocks to a manufacturer or wholesaler holding a valid license to deal in such drugs, or to another pharmacy or practitioner.

~~(2)~~ 2. A manufacturer or wholesaler may dispose of such stocks only to a manufacturer or wholesaler holding a valid ~~license~~ permit to deal in such drugs.

Drafting Note: There is no change in the law.

§ 54.1-3418. ~~§ 54-524.62~~. Sale of aqueous or oleaginous solutions.—A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions compounded by the pharmacist, of which the content of narcotic drugs does not exceed a proportion greater than twenty ~~per centum~~ percent of the complete solution, to be used for medical purposes.

Drafting Note: There is no change in the law.

§ 54.1-3419. ~~§ 54-524.67:3~~. Dispensing of insulin preparations.—Any insulin preparation shall be dispensed only by or under the supervision of a licensed pharmacist.

Drafting Note: There is no change in the law.

~~§ 54.1-3420. § 54-524.58:2.~~ Distribution of certain drugs; written request or confirmation of receipt.—No manufacturer or distributor of controlled substances shall distribute or dispense any substance listed on Schedules II through V to any person, whether a practitioner of the healing arts or some other profession, except with the written request or confirmation of receipt of the practitioner; ~~such~~. ~~Such~~ request or confirmation ~~to shall~~ be maintained as required by ~~Chapter 15.1 (§ 54-524.1 et seq.) of Title 54 this chapter~~.

Subject to the foregoing provisions, no person shall be prohibited from distributing controlled substances listed on Schedules II through V for charitable uses or for use in research or investigations.

Drafting Note: There is no change in the law.

~~§ 54.1-3421. § 54-524.95.~~ New drugs.—~~(a)~~ A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

~~(1)~~ 1. An application with respect ~~thereto~~ to the drug has been approved and ~~said~~ the approval has not been withdrawn under § 505 of the federal act; or

~~(2)~~ 2. When not subject to the federal act, ~~unless~~ such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in ~~the~~ its labeling ~~thereof~~; and.

Prior to selling or offering a new drug for sale ~~such~~ drug, ~~there has been~~, an application shall be filed with the Board ~~an application~~ setting forth ~~(a)~~ full reports of investigations which ~~have been made to~~ show whether or not ~~such~~ the drug is safe for use and whether ~~such~~ drug is and effective in use; ~~(b)~~, a full list of the ~~articles~~ used as components of ~~such~~ the drug; ~~(c)~~, a full statement of the composition of ~~such~~ the drug; ~~(d)~~, a full description of the methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug; ~~(e)~~, such samples of such drug and ~~of the articles used as its components thereof~~ as the Board may require; and ~~(f)~~ specimens of the ~~proposed~~ labeling ~~proposed to be used~~ for such drug.

~~(b)~~ B. An application provided for in subsection ~~(a)~~ ~~(2)~~ A shall become effective ~~on the one hundred eightieth day~~ 180 days after filing ~~thereof~~, ~~except that if~~. If the Board finds, after due notice to the applicant and ~~giving~~ providing him an opportunity for a hearing, ~~(1)~~ that the drug is not safe or not effective ~~for use~~ under the conditions prescribed, recommended or suggested in the proposed labeling ~~thereof~~; or ~~(2)~~ the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drugs are inadequate to preserve its identity, strength, quality, and purity; or ~~(3)~~ based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; ~~he~~, the Board shall, prior to the effective date of the application, issue an order refusing to ~~permit~~ approve the application ~~to become effective~~.

~~(c)~~ C. An order refusing to ~~permit~~ approve an application under this section ~~to become effective~~ may be revoked by the Board.

~~(d)~~ D. The Board shall promulgate regulations for exempting from ~~the operation of the foregoing subsections~~ of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, ~~within the discretion of the Board~~ among other conditions relating to the protection of the public health, provide for conditioning such exemption upon:

~~(1)~~ 1. The Submission to the Board, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) ~~of~~, ~~such~~ drug, which are adequate to justify the proposed clinical testing;

~~(2)~~ 2. Obtaining from the manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing ~~obtaining a signed~~ an agreement ~~from~~ signed by each of ~~such~~ the investigators stating that patients to whom the drug is administered will be under ~~his~~ their personal supervision, or under the supervision of investigators responsible to ~~him~~ them, and that ~~he~~ they will not supply such drug to any other investigator; or ~~to~~ clinic, for administration to human beings; and

~~(3)~~ 3. The Establishment and maintenance of ~~such~~ records, and the making of such reports to the Board by the manufacturer or the sponsor of the investigation of ~~such~~ the drug, of data (

, including but not limited to analytical reports by investigators } , obtained as the result of such investigational use of ~~such the~~ drug, as the Board finds will enable it requires to evaluate the safety and effectiveness of ~~such the~~ drug in the event of the filing of an application pursuant to subsection (b) .

~~Such~~ The regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using ~~such the~~ drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible or, in their professional judgment, contrary to the best interests of such human beings. ~~Nothing in this~~ This subsection shall not be construed to require any clinical investigator to submit reports directly to the Board reports on the investigational use of drugs ; ~~provided, that the~~ . The Board may ; in its discretion, promulgate regulations whether or not in accordance with regulations promulgated under the federal act.

(e) (1) E. In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the applicant shall establish and maintain ~~such~~ records, and make ~~such~~ reports to the Board of data relating to clinical experience and as well as other data or information ; ~~received or otherwise obtained by such applicant with respect to such drug,~~ as the Board may , by general regulation, or by order with respect to such application, may prescribe ; ~~provided, however, that~~ . However, the regulations and orders issued under this subsection and under subsection (d) section shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide where the Board deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Board.

(2) Every person required under this section to maintain records ; and every person in charge of custody thereof of the records ; shall, upon request of an officer or employee designated by the Board , permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(f) F. The Board may, after affording an opportunity for public hearing and judicial appeal, revoke an application approved pursuant to this section if it finds that the drug, based on evidence acquired after such approval, may not be safe or effective for its intended use, or that the facilities or controls used in the manufacture, processing, or labeling of such drug may present a hazard to the public health.

(g) G. None of the foregoing provisions of this section shall be deemed to apply to a drug subject to the federal act intended solely for investigational use and for which a notice of claimed investigational exemption for a new drug has been filed pursuant to said act and the regulations thereunder .

Drafting Note: There is no change in the law.

§ 54.1-3422. § 54-524.47-2. Controlled substances registration certificate ; required in addition to other registration requirements; exemptions.- (a) A. Every person who manufactures, distributes or dispenses any substance which is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except those persons who are registered under the provisions of §§ 54-524.25 or 54-524.31 licensed pharmacists shall obtain annually a controlled substances registration certificate issued by the Board in accordance with its rules and regulations, and such . This registration shall be in addition to other registration licensing or permitting requirements enumerated in this chapter or otherwise required by law.

(b) B. Registration under this section and under all other applicable registration requirements shall entitle the registrant to lawfully possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.

(c) C. The following persons need not register and may lawfully possess controlled substances in Schedules I through V:

(1) 1. An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance holder of a controlled substance registration certificate if he is acting in the usual course of his business or employment;

(2) 2. A common or contract carrier or warehouseman, or an his employee thereof , whose

possession thereof is in the usual course of business or employment; or

~~(3)~~ 3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

~~(4)~~ D. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

Drafting Note: There is no change in the law.

§ 54.1-3423. § 54-524.47:3. Same; Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees.— ~~(a)~~ A. The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:

~~(1)~~ 1. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

~~(2)~~ 2. Compliance with applicable State state and local law;

~~(3)~~ 3. Any convictions of the applicant under any federal and state laws relating to any controlled substance;

~~(4)~~ 4. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

~~(5)~~ 5. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

~~(6)~~ 6. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

~~(7)~~ 7. Any other factors relevant to and consistent with the public health and safety.

~~(b)~~ B. Registration under subsection ~~(a)~~ A does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

~~(c)~~ C. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this State Commonwealth . The Board need not require separate registration under this section for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this section in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this State Commonwealth upon furnishing the evidence of that federal registration.

~~(d)~~ D. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such application applications shall be accompanied by a fee in an amount to be determined by the Board which shall also be paid as the fee for annual renewal of such registration .

Drafting Note: There is no change in the law.

§ 54.1-3424. § 54-524.47:4. Same; Suspension or revocation of registration; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to Bureau.— ~~(a)~~ A. A registration under § 54-524.47:3 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:

~~(1)~~ 1. Has furnished false or fraudulent material information in an application filed under this chapter;

~~(2)~~ 2. Has been convicted of a felony under any State state or federal law relating to any controlled substance;

~~(3)~~ 3. Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances suspended or revoked ;

~~(4)~~ 4. Has violated or cooperated with others in violating any provision of this chapter or

rules or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.

(b) B. The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) C. If the Board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court ; upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the *State Commonwealth* .

(d) D. The Board shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

Drafting Note: There is no change in the law.

§ 54.1-3425. § 54-524.47-1. Issuance of limited permits to humane societies.—The Board shall may issue, upon such terms and conditions as it finds proper, to any humane society ; which shall make making application therefor , a limited permit only for the purpose of buying, possessing and using sodium pentobarbital to euthanize injured, sick, homeless and unwanted domestic pets and animals. The application and renewal thereof for such a special permit shall be accompanied by a fee of fifteen dollars, which shall also be the fee for annual renewal as determined by the Board .

Drafting Note: There is no change in the law.

§ 54.1-3426. § 54-524.67-1. Regulations for special packaging.—A. The Board shall by regulation adopt standards for special packaging and for the use thereof consistent with those promulgated pursuant to the federal Poison Prevention Packaging Act of 1970. The Board may by regulation exempt any drug from the requirements of special packaging and shall by regulation exempt any drug exempted pursuant to the Poison Prevention Packaging Act of 1970.

B. A practitioner or a purchaser may direct that a drug, which is subject to being dispensed in special packaging, be dispensed in other than special packaging.

Drafting Note: There is no change in the law.

§ 54.1-3427. § 54-524.67-2. Dispensing drugs without safety closure container.—When a pharmacist receives the request of any person that a drug or drugs for such person to be dispensed by the pharmacist not be placed in a safety closure container, the pharmacist may dispense such drug or drugs in such nonsafety closure container. The delivering pharmacist shall not be civilly liable simply by reason of dispensing a drug or drugs in such a container if the recipient signs a release covering a period of time or a single delivery, which release provides that the recipient releases the pharmacist from civil liability for not using the safety closure container, unless the pharmacist acted with wilful willful and wanton disregard of safety.

Drafting Note: There are no changes.

§ 54-524.98. False advertisement.— (a) An advertisement of a drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis) ; prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested ; directly or indirectly, in the sale of such drugs or devices ; provided, that whenever the Board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interests of public health ; provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

Drafting Note: This section is not necessary.

~~§ 54.1-3428. § 54-524.100. Dissemination of information.—The Board may cause to be disseminated disseminate such information regarding drugs, devices, and cosmetics as the Board deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this This section shall not be construed to prohibit the Board from collecting, reporting, and illustrating the results of the its investigations of the Board .~~

Drafting Note: There is no change in the law.

~~§ 54-524.3. Disposition of fines and fees. All fines and fees collected under this chapter shall be paid into the State treasury.~~

Drafting Note: This section is not necessary because § 54.1-2401 covers monetary penalties.

~~§ 54-524.33. Injunction. In addition to the remedy provided in § 54-524.22:1 or any other remedies at law, the Board may apply to a court of equity of the proper venue for an injunction to restrain any person, partnership, corporation, or other type of firm, from any activity regulated by this chapter which is in violation of any regulation of the Board or any provisions of this chapter. The Board shall not be compelled to allege or prove that an adequate remedy at law does not exist.~~

Drafting Note: This section is not necessary, because § 54.1-111 authorizes injunctions.

~~§ 54.1-3429. § 54-524.46. Revocation of permit issued to manufacturer, wholesaler or distributor.—The Board may revoke a permit issued to a manufacturer, wholesaler or distributor for failure to comply with its regulations promulgated pursuant to the provisions of §§ 54-524.36 or 54-524.44, or for failure to comply with any provision of this chapter ; such revocation to be in accordance with Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code .~~

Drafting Note: There is no change in the law.

~~§ 54-524.32. Appeal from revocation of permit. Any person who may feel himself aggrieved at the revocation of his permit may appeal from the action of the Board as provided by the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).~~

Drafting Note: This section is no longer necessary because § 54.1-109 requires appeals from actions of the boards to be in accord with the provisions of the A.P.A.

~~§ 54.1-3430. § 54-524.38. Display of permit ; permits nontransferable; renewal .—Permits issued under the provisions of this article chapter shall be exposed displayed in a conspicuous place in the factory or other place of business for which issued.~~

~~§ 54-524.39. Permits nontransferable; renewal.—Such Permits shall not be transferable and shall be renewed annually as provided in §§ 54-524.40 through 54-524.41:1 .~~

Drafting Note: There is no change in the law. This section consolidates §§ 54-524.38 and 54-524.39.

~~§ 54.1-3431. § 54-524.77:1. Admission into evidence of certain certificates of analysis.—In any administrative hearing held pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) , a certificate of analysis of a chemist performing an analysis or examination , performed in any laboratory operated by the Division of Consolidated Laboratory Services or authorized by such Division to conduct such analysis or examination , when such certificate is duly attested by such chemist, shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein . A copy of such certificate shall be delivered to the parties in interest at least seven days prior to the date fixed for the hearing.~~

~~Any such certificate of analysis purporting to be signed by any such chemist shall be admissible as evidence in such hearing without any proof of the seal or signature or of the official character of the chemist whose name is signed to it.~~

Drafting note: There is no change in the law.

Article 2.

Permitting of Pharmacies.

~~§ 54.1-3432. § 54-524.51. Supervision by pharmacist.—Every pharmacy shall be under the personal supervision of a pharmacist in the pharmacy .~~

Drafting Note: There is no change in the law.

~~§ 54.1-3433. § 54-524.49. Certain advertising and signs unlawful.—It shall be unlawful for any place of business which is not a pharmacy as defined in this chapter to advertise or to have upon it or in it as a sign the words, "pharmacy," "pharmacist," "apothecary," "drugstore,"~~

“druggist,” “drugs,” “medicine store,” “drug sundries,” “prescriptions filled” or any like words indicating that drugs are compounded or sold or prescriptions filled ~~therein~~. Each day during which ; ~~or a part of which~~, such advertisement appears or such sign is allowed to remain upon or in such place of business shall constitute a separate offense under this section.

Drafting Note: There is no change in the law.

§ 54.1-3434. § 54-524.31. Permit to conduct pharmacy.— (a) A. No person shall conduct a pharmacy without first obtaining a permit from the Board.

(b) B. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmacy and who will be fully engaged in the practice of pharmacy at the location designated on the application.

(c) C. The application shall show the corporate name and ~~for~~ trade name and shall list any pharmacist in addition to the pharmacist-in-charge practicing at the location indicated on the application.

(d) D. If the owner is other than the pharmacist making the application, the type of ownership shall be indicated and shall list any partner or partners, and, if a corporation, then the corporate officers and directors.

(e) E. The permit shall be issued only to the pharmacist who signs the application as the pharmacist-in-charge and as such assumes the full responsibilities for the legal operation of the pharmacy ; ~~provided, however, that nothing contained herein~~. *This permit and responsibilities shall not be construed to negate any responsibility of any pharmacist or other person.*

(f) F. Upon termination of practice by the pharmacist-in-charge, or upon any change in partnership composition, or upon the acquisition of the existing corporation by another person, the permit previously issued shall be immediately surrendered to the Board by the pharmacist-in-charge to whom it was issued, or by his legal representative, and an application for a new permit may be made in accordance with the requirements of this chapter. The Board shall promulgate regulations providing a reasonable time period for designation of a new pharmacist-in-charge.

The succeeding pharmacist-in-charge shall cause an inventory to be made of all Schedule I, II, III, IV and V drugs on hand. Such inventory shall be completed as of the date he becomes pharmacist-in-charge and prior to opening for business on that date.

(g) G. The pharmacist to whom such permit is issued shall provide safeguards against diversion of all controlled substances.

(h) H. An application for a pharmacy permit shall be accompanied by a fee determined by the Board. All permits shall expire on December 31 of each year.

(i) I. Every pharmacy must be equipped so that prescriptions can be properly filled. The Board of Pharmacy shall prescribe the minimum of such professional and technical equipment, which a pharmacy shall at all times possess, and such list shall include as reference the latest revision of the United States Pharmacopoeia Dispensing Information. No permit shall be issued or continued for the conduct of a pharmacy until or unless *there is compliance with the provisions of this chapter and regulations promulgated by the Board have been complied with*.

(j) J. Each day during which a person is in violation of this section shall constitute a separate offense.

Drafting Note: There is no change in the law.

Article 3.

Permitting of Wholesalers and Distributors.

§ 54.1-3435. § 54-524.44. Permit to act as wholesaler or distributor; renewal; fee.—Every person desiring to act as a wholesaler or distributor as defined in ~~paragraph (32) of § 54-524.2~~ § 54.1-3401 in this *State Commonwealth* shall (1) apply to the Board for a permit ~~so to do~~ ; (2) renew such permit, if granted, each year; and (3) ~~remit a fee determined by the Board payable January 1 of each year with application for such permit as determined by the Board~~

Drafting Note: There is no change in the law.

§ 54.1-3436. § 54-524.45. Persons to whom permit as wholesaler or distributor granted.—No

person shall be granted a permit as a wholesaler or distributor unless he is of good moral character and properly equipped as to land, building and equipment to carry out the functions of a wholesaler or distributor with due regard to the protection of the public. The Board may adopt such regulations as may be necessary to prevent diversion and to protect the public in the storage, handling, and distribution by wholesalers or distributors of drugs subject to the requirements of this chapter.

Application for such permit shall not be required of manufacturers of drugs and medicines and cosmetics who are subject to § 54-524.36; nor shall it be required of § 54.1-3437 or wholesalers or distributors of medicated feeds, insecticides, fungicides and rodenticides who are properly registered as provided by law.

Drafting Note: There is no change in the law.

Article 4.

Permitting of Manufacturers.

§ 54.1-3437. § 54-524.36. Permit to manufacture ; etc., drugs, ~~dentifrices,~~ cosmetics, devices, etc.—It shall be lawful to manufacture, make, produce, pack, package, repackage, relabel or prepare any drug not controlled by Schedule I, ~~dentifrice,~~ or any cosmetic or device after first obtaining the appropriate permit from the Board. Such permits shall be subject to ~~such the Board's regulations with respect to~~ on sanitation, equipment, and safeguards against diversion as the Board may from time to time adopt for the protection of the public health and safety . This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or package no other drugs and no cosmetics.

Drafting Note: There is no change in the law.

§ 54.1-3438. § 54-524.37. Manufacturing, etc., of drugs, proprietary medicines, etc., to be supervised by pharmacist.—No drugs, proprietary medicines, cosmetics or devices shall be manufactured, made, produced, packed, packaged, repackaged, relabeled or prepared within this State Commonwealth , except under the personal and immediate supervision of a pharmacist or such other person as may be approved by the State Board of Pharmacy after an investigation and a determination by the Board that they are qualified by scientific or technical training to perform such duties or supervision as may be necessary to protect the public health and safety ; ~~except that this~~ . This provision shall not apply to manufacturers or packers of medicated feeds who manufacture or pack no other drugs and no cosmetics, or to the mixing and blending by merchants and retail dealers of cosmetics manufactured and packaged in accordance with this chapter. Medicated feeds are hereby defined as products obtained by mixing a commercial feed and a drug.

Drafting Note: There is no change in the law.

§ 54.1-3439. § 54-524.40. Application for nonrestricted manufacturing permit; fee.—Every person desiring to manufacture any drug, proprietary medicines, cosmetic, or device shall annually apply to the Board for a nonrestricted manufacturing permit ~~on a form prescribed by the Board~~ . The application shall be accompanied by the required fee ~~determined by the Board which shall also be paid as the fee for renewal of such permit~~ . Separate applications shall be made and separate permits issued for each specific place of manufacturing. Each such ~~registration permit~~ shall expire on December 31 ~~next following its issuance or renewal~~ .

Drafting Note: There is no change in the law.

§ 54.1-3440. § 54-524.41. Persons to whom nonrestricted permit is granted.—No person shall be granted a nonrestricted permit as a manufacturer unless he is of good moral character and properly equipped as to land, buildings, equipment and safeguards against diversion to carry out the functions of a manufacturer with due regard to the protection of the public safety.

Drafting Note: There are no changes.

§ 54.1-3441. § 54-524.41:1. Restricted manufacturing permit; application; fee; separate application and permit for each place of manufacturing.—Every person desiring to manufacture a proprietary medicine or cosmetic shall apply to the Board for a restricted manufacturing permit ~~on a form prescribed by the Board~~ . The application shall be accompanied by the required fee ~~determined by the Board which shall also be paid as the fee for renewal of such permit~~ . Separate applications shall be made and separate permits issued for each separate place of manufacturing.

Drafting Note: There is no change in the law.

§ 54.1-3442. § 54-524.41:2. ~~Same~~; When permit not to be granted; regulations.—No person shall be granted a restricted manufacturing permit as a manufacturer unless such person is properly equipped as to buildings and equipment to carry out the functions of a manufacturer with due

regard to the protection of the public health. The Board shall promulgate regulations in order to carry out the provisions of this section.

Drafting Note: There is no change in the law.

Article 5.

Standards and Schedules.

~~§ 54.1-3443. § 54-524.84:1. Board to administer article and may add, delete or reschedule substances; rulings; Board to conform to federal law with respect to controlled substances; exemption. - (a) A. The Board shall administer this article and may add substances to or delete or reschedule all substances enumerated in the schedules in §§ 54-524.84:4, 54-524.84:6, 54-524.84:8, 54-524.84:10 or 54-524.84:12 this article pursuant to the procedures of Chapter 1-1 (§ 9-6.1 et seq.) the Administrative Process Act (§ 9-6.14:1 et seq.) of Title 9 of this Code . In making a determination regarding a substance, the Board shall consider the following:~~

~~(1) 1. The actual or relative potential for abuse;~~

~~(2) 2. The scientific evidence of its pharmacological effect, if known;~~

~~(3) 3. The state of current scientific knowledge regarding the substance;~~

~~(4) 4. The history and current pattern of abuse;~~

~~(5) 5. The scope, duration, and significance of abuse;~~

~~(6) 6. The risk to the public health;~~

~~(7) 7. The potential of the substance to produce psychic or physiological physical dependence liability ; and~~

~~(8) 8. Whether the substance is an immediate precursor of a substance already controlled under this article.~~

~~(b) B. After considering the factors enumerated in subsection (a) A, the Board shall make findings with respect thereto and issue a rule regulation controlling the substance if it finds the substance has a potential for abuse.~~

~~(c) C. If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.~~

~~(d) D. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of one hundred twenty 120 days from publication in the Federal Register of the final order designating a substance as a controlled substance or rescheduling or deleting a substance without following the provisions specified in subsections (a) A and (b) B of this section.~~

~~(e) E. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4 (§ 4-1 et seq.) of this Code.~~

~~(f) F. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.) or State state law, be lawfully sold over the counter without a prescription.~~

Drafting Note: There is no change in the law.

~~§ 54.1-3444. § 54-524.84:2. Controlled substances included by whatever name designated.—The controlled substances listed or to be listed in the schedules in §§ 54-524.84:4, 54-524.84:6, 54-524.84:8, 54-524.84:10 or 54-524.84:12 this chapter are included by whatever official, common, usual, chemical, or trade name designated.~~

Drafting Note: There is no change in the law.

~~§ 54.1-3445. § 54-524.84:3. Placement of substance in Schedule I.—The Board shall place a substance in Schedule I if it finds that the substance:~~

~~(1) 1. Has high potential for abuse; and~~

(2) 2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Drafting Note: There is no change in the law.

§ 54.1-3446. § ~~54-524.84-4~~. Schedule I.— A. The controlled substances listed in this section are included in Schedule I :

B. 1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

Acetylmethadol;
Allylprodine;
Alphamethylfentanyl;
Alphacetylmethadol;
Alphameprodine;
Alphamethadol;
Benzethidine;
Betacetylmethadol;
Betameprodine;
Betamethadol;
Betaprodine;
Clonitazene;
Dextromoramide;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimepheptanol;
Dimethylthiambutene;
Dioxaphetylbutyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxidine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levomoramide;
Levophenacymorphan;

Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampramide;
Phenomorphane;
Phenoperidine;
Piritramide;
Proheptazine;
Propiramide;
Propiram;
Racemoramide;
Trimeperidine.

C. 2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine;
Heroin;
Hydromorphanol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;

Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Phoclodine;
Thebacon.

D. Hallucinogenic substances. 3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

3,4-methylenedioxy amphetamine;
5-methoxy-3,4-methylenedioxy amphetamine;
3,4,5-trimethoxy amphetamine;
Bufotenine;
Diethyltryptamine;
Dimethyltryptamine;
4-methyl-2,5-dimethoxyamphetamine;
Ibogaine;
Lysergic acid diethylamide;
Mescaline;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

Peyote;
N-ethyl-3-piperidyl benzilate;
N-methyl-3-piperidyl benzilate;
Psilocybin;
Psilocyn;

Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U. S. Food and Drug Administration;

Hashish oil (Some trade or other names: hash oil; liquid marijuana; liquid hashish);

2,5-dimethoxyamphetamine (Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA);

4-bromo-2,5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);

4-methoxyamphetamine (Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA);

N-ethyl analog of phencyclidine;

Pyrrolidine analog of phencyclidine;

Thiophene analog of phencyclidine;

E. Depressants. — 4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Mecloqualone;

Methaqualone.

F. Stimulants. — 5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

Fenethylamine;

Ethylamphetamine.

G. 6. Any material, compound, mixture or preparation containing any quantity of the following substances:

3-methylfentanyl- (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;

1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;

1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers;

N-[1-(1-methyl-2-phenylethyl)-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;

N-[1-(1-methyl-2-(2-thienyl)ethyl)-4-piperidyl]-N-phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;

N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers;

N-[1-(2-hydroxy-2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;

N-[3-methyl-1-(2-hydroxy-2-phenylethyl)-4-piperidyl]-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;

N-[3-methyl-1-(2-(2-thienyl)ethyl)-4-piperidyl]-N-phenylpropanamide (3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;

N-[1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts and salts of isomers;

N-[1-(2-(2-thienyl)ethyl)-4-piperidyl]-N-phenylpropanamide (thiofentanyl), its optical isomers, salts and salts of isomers.

Drafting Note: There is no change in the law.

§ 54.1-3447. § 54-524.84:5. Placement of substance in Schedule II.—The Board shall place a substance in Schedule II if it finds that:

(1) 1. The substance has high potential for abuse;

F. 5. The Board may except by *rule regulation* any compound, mixture, or preparation containing any depressant substance listed in ~~subsection B subdivision 1~~ from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

Drafting Note: There is no change in the law.

§ 54.1-3453. ~~§ 54-524.84-11.~~ Placement of substance in Schedule V.—The Board shall place a substance in Schedule V if it finds that:

~~(1)~~ 1. The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

~~(2)~~ 2. The substance has currently accepted medical use in treatment in the United States; and

~~(3)~~ 3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

Drafting Note: There is no change in the law.

§ 54.1-3454. ~~§ 54-524.84-12.~~ Schedule V.— A. The controlled substances listed in this section are included in Schedule V :

B. ~~Narcotic drugs.~~ — 1. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

Buprenorphine.

C. 2. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

D. The Board may except by regulation any compound, mixture or preparation containing any depressant substance listed in ~~subsection C subdivision 2~~ from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § ~~54-524.75~~ 54.1-3416 .

Drafting Note: There is no change in the law.

§ 54.1-3455. ~~§ 54-524.84-13.~~ Schedule VI.—The following classes of drugs and devices shall be controlled by Schedule VI:

~~(a)~~ 1. Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedules III, IV or V and designated by the Board as subject to this section.

~~(b)~~ 2. Every drug, not included in Schedules I, II, III, IV or V, or device, which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific

training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed by law to prescribe or administer such drug or device.

(e) 3. Any drug, not included in Schedules I, II, III, IV or V, or device, required by federal law to bear on its label the legend: "Caution: Federal Law Prohibits Dispensing Without Prescription" or which bears the legend "Caution: Federal Law Restricts This Device To Sales By Or Use On The Order Of A Physician" or which bears the legend: "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Veterinarian."

Drafting Note: There is no change in the law.

§ 54.1-3456. § 54-524.84.14. Designer drugs.—Any drug not listed on Schedule I or II in this chapter, which is privately compounded, with the specific intent to circumvent the provisions of this chapter, to emulate or simulate the effects of another drug or class of drugs listed on Schedules Schedule I or II in this chapter through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent, shall be considered to be listed on the same schedule as the drug or class of drugs which it imitates in the same manner as any isomer, ester, ether, salts of isomers, esters and ethers of such drug or class of drugs.

Drafting note: No change in the law.

Article 6

Misbranded and Adulterated

Drugs and Cosmetics

§ 54.1-3457. § 54-524.85. Prohibited acts.—The following acts and the causing thereof within this State are hereby shall be prohibited:

(a) 1. The manufacture, sale, or delivery, holding or offering for sale of any drug, device, or cosmetic that is adulterated or misbranded.

(b) 2. The adulteration or misbranding of any drug, device, or cosmetic.

(c) 3. The receipt in commerce of any drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) 4. The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 54-524.95 54.1-3421 .

(e) 5. The dissemination of any false advertisement.

(f) 6. The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by § 54-524.99 .

(g) 7. The giving of a false guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this State from whom he received in good faith the drug, device, or cosmetic .

(h) 8. The removal or disposal of a detained or embargoed article in violation of § 54-524.88 § 54.1-3459 .

(i) 9. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(j) 10. The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act.

(k) 11. The using by any person to his own advantage, or revealing, other than to the Board or its authorized representative or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.

(4) 12. The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under ~~§ 54-524.95~~ § 54.1-3421 , or that such drug complies with the provisions of such section.

~~(m)~~ 13. In the case of a drug distributed or offered for sale in this *State Commonwealth* , the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. ~~Nothing in this paragraph~~ *This subdivision shall not be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.*

~~(n)~~ (1) 14. Placing or causing to be placed upon any drug or device or container thereof , with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or (2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by ~~subsection this section~~ (1) hereof; or (3) making, selling, disposing of, or causing to be made, sold or disposed of, or keeping in possession, control or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(e) 15. The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

~~(p)~~ 16. Dispensing or causing to be dispensed , *except as provided in § 32.1-87 relating to the Virginia Voluntary Formulary*, a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the permission of the person ordering or prescribing.

Drafting Note: There is no change in the law.

~~§ 54-524.86. Injunction. In addition to the remedies hereinafter provided the Board is hereby authorized to apply to the circuit or corporation court of the county or city wherein the violator has his principal place of business, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 54-524.85 or any Board regulation promulgated under this chapter irrespective of whether or not there exists an adequate remedy at law.~~

Drafting note: Injunctive authority is granted to all boards in the general provisions for the title.

~~§ 54.1-3458. § 54-524.87. Violations.— (a) A. Any person who violates any of the provisions of § 54-524.85 § 54.1-3457 shall be guilty of a Class 2 misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months or a fine of not more than \$500, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, the person shall be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine .~~

~~(b) B. No person shall be subject to the penalties of subsection (a) of this section ; for having violated § 54-524.85 (a) or (e) subdivisions 1 and 3 of § 54.1-3457 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this *State Commonwealth* from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter ; designating this chapter .~~

~~(c) C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Board , to furnish the Board the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this *State Commonwealth* who caused him to disseminate such advertisement.~~

Drafting note: There is no change in the law.

~~§ 54.1-3459. § 54-524.88. Tagging of adulterated or misbranded drugs, devices, or cosmetics; condemnation; destruction; expenses.— (a) A. Whenever a duly authorized agent of the Board~~

finds, or has probable cause to believe, that any drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter ; or is in violation of ~~§ 54-524.05 § 54-3457~~ , he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded or in violation of ~~§ 54-524.05 § 54.1-3457~~ and has been detained ~~or embargoed, and warning~~ . The tag shall also warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained ~~or embargoed~~ article by sale or otherwise without such permission.

~~(b)~~ B. When an article is adulterated or misbranded or is in violation of ~~§ 54-524.05 § 54.1-3421~~ it shall be liable to be proceeded against by , the Board may petition of the judge of the police, county, or the circuit court in whose jurisdiction the article is located, detained ; ~~or embargoed for a libel~~ for condemnation of such article. When an authorized agent has found finds that an article which is ~~embargoed or~~ has been detained is not adulterated or misbranded, or in violation of ~~§ 54-524.05 § 54.1-3421~~ , he shall remove the tag or other marking.

~~(c)~~ C. If the court finds that a ~~sampled, detained ; or embargoed~~ article is adulterated or misbranded, or in violation of ~~§ 54-524.05 § 54.1-3421~~ , such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof , under the supervision of an authorized agent, and all court costs and fees, and storage and other proper expenses, shall be ~~taxed levied~~ against the claimant of such article or his agent ; ~~provided, that when~~ . When the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be ~~order the article so to be~~ properly labeled or processed ; ~~has been executed, may by order direct that such article be~~ delivered to claimant thereof for such labeling or processing under the supervision of an agent of the Board . The expense of such ~~the~~ supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the Board that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

Drafting note: There is no change in the law.

~~§ 54.1-3460. § 54-524.01. Poisonous or deleterious substance, or color additive.—Any added~~ poisonous or deleterious substance, or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of ~~§ 54-524.02 (A)~~ with respect to any drug ~~or , device, or § 54-524.06 (a)~~ with respect to any or cosmetic, unless there is in effect a regulation ; ~~promulgated under this chapter by the Board limiting the allowing limited~~ use of a quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated within the meaning of ~~§ 54-524.02 (A) or 54-524.06 (a)~~ .

Until such time as the Board shall have promulgated regulations contemplated herein, compliance with the federal act and regulations promulgated thereunder shall be deemed to be in compliance herewith.

Drafting note: These is no change in the law.

~~§ 54.1-3461. § 54-524.02. Adulterated drug or device.— A. A drug or device shall be deemed to be adulterated: (A) (1)~~

1. If it consists in whole or in part of any filth, putrid or decomposed substance; ~~or (2) (a)~~

2. If it has been produced, prepared, packed, or held under insanitary conditions whereby it has been contaminated with filth, or whereby it has been rendered injurious to health; ~~or (b)~~

3. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess ; ~~or~~

~~(3)~~ 4. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; ~~or~~

~~(4)~~ 5. If ~~(a)~~ it is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or ~~§ 54-524.01 § 54.1-3460~~ ; or ~~(b)~~

6. It is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act or § ~~54-524.91~~ § 54.1-3460 .

~~(B)~~ *If B. A drug or device shall be deemed to be adulterated if it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its the difference in strength, quality, or purity from such standard is plainly stated on its label.*

Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

~~(C)~~ *If C. A drug or device shall be deemed to be adulterated if it is not subject to the provisions of paragraph ~~(B)~~ subsection B of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.*

~~(D)~~ *If D. A drug or device shall be deemed to be adulterated if it is a drug and any substance has been ~~(1)~~ (i) mixed or packed therewith with it so as to reduce its quality or strength ; or ~~(2)~~ (ii) substituted wholly or in part therefor for it .*

Drafting note: There is no change in the law.

§ 54.1-3462. § ~~54-524.93~~. Misbranded drug or device.—A drug or device shall be deemed to be misbranded:

~~(a)~~ 1. If its labeling is false or misleading in any particular.

~~(b)~~ 2. If in its package form unless it bears does not bear a label containing ~~(1)~~ the name and place of business of the manufacturer, packer, or distributor ; ~~provided, however, that .~~ However, all prescription drugs intended for human use and devices manufactured after July 1, 1977, shall bear a label containing the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor ; and ~~(2)~~ an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count ; ~~provided, that under clause (2) of this paragraph .~~ Reasonable variations shall be permitted, and exemptions as to for small packages shall be allowed ; in accordance with regulations prescribed by of the Board.

~~(c)~~ 3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (, as compared with other words, statements, designs or devices, in the labeling) , and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

~~(d)~~ 4. If it is for use by man and contains any quantity of the narcotic or hypnotic substances alpha-eucaine, barbituric acid, beta-eucaine, bromal, carbromal, chloral, coca, cocaine, codeine, morphine, opium, paraldehyde, or sulfonmethane, or any chemical derivative of such substances, which derivative, after investigation has been found to be and designated as, habit forming, by regulations issued by the Board under this chapter, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning - May Be Habit Forming."

~~(e)~~ ~~(1)~~ 5. If it is a drug, unless ~~(A)~~ its label bears, to the exclusion of any other nonproprietary name (, except the applicable systematic chemical name or the chemical formula) , ~~(i)~~ the established name (as defined in subparagraph ~~(2)~~) of the drug, if such there be; and ~~(ii)~~ in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances ; ~~contained therein; provided, that .~~ However, the requirement for stating the quantity of the active ingredients, other

than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs ; and ~~(B)~~ for any . Any prescription drug the established name of such drug or ingredient, as the case may be, on such label ~~(and on any labeling on which a name for such drug or ingredient is used)~~ is shall have the established name of the drug or ingredient printed on its label prominently and in type at least half as large as that used ~~thereon~~ for any proprietary name or designation for such drug or ingredient ; ~~provided, that to the extent that compliance with the requirements of clause (A) (ii) or clause (B) of this subparagraph is impracticable, exemptions . Exemptions may be allowed under regulations promulgated by of the Board.~~

~~(2)~~ As used in this ~~paragraph (e) subdivision~~ , the term "established name," with respect to a drug or ingredient ~~thereof~~ , means ~~(A)~~ the applicable official name designated pursuant to § 508 of the federal act, or ~~(B)~~ if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title ~~thereof~~ in such compendium or ~~(C)~~ if neither ~~clause (A) nor clause (B) of this subparagraph applies exists~~ , then the common or usual name, if any, of such drug or of such ingredient ; ~~provided, further, that where clause (B) of this subparagraph applies to . Whenever, an article is recognized in the United States Pharmacopoeia and National Formulary and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.~~

~~(f)~~ 6. Unless its labeling bears ~~(1)~~ adequate directions for use ; and ~~(2)~~ such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users ; ~~provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the . The Board shall promulgate regulations exempting such drug or device from such requirements ; provided further, that when these requirements are not necessary to protect the public health and the articles are also exempted under regulations issued under § 502(f) of the federal act may also be exempt .~~

~~(g)~~ 7. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed ~~therein; provided, that .~~ The method of packing may be modified with the consent of the Board, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia ; ~~provided further, that . However, in the event of inconsistency between the requirements of this paragraph subdivision and those of paragraph (e) subdivision 5 as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) subdivision 5 shall prevail.~~

~~(h)~~ 8. If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling or advertising ~~thereof~~ .

~~(i)~~ 9. If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless ~~(1)~~ it is from a batch ~~with respect to for~~ which a certificate or release has been issued pursuant to § 506 of the federal act, and ~~(2)~~ such certificate or release is in effect with respect to such drug.

~~(j)~~ 10. If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative ~~thereof~~ , unless ~~(1)~~ it is from a batch ~~with respect to , for~~ which a certificate or release has been issued pursuant to § 507 of the federal act, and ~~(2)~~ such certificate or release is in effect ~~with respect to for~~ such drug ; ~~provided, that this . This paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under § 507(c) or (d) of the federal act law .~~

For the purpose of this ~~subsection subdivision~~ the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution { , including, the chemically synthesized equivalent of any such substance } .

~~(k)~~ 11. If it is a color additive, the intended use of which in or on drugs is for the ~~purpose~~ of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of the

federal act.

~~(1)~~ 12. In the case of any prescription drug distributed or offered for sale in this State Commonwealth, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of ~~(1)~~ (i) the established name, as defined in § 54-524.93 ~~(e)~~ ~~(2)~~ this section, printed prominently and in type at least half as large as that used for any trade or brand name thereof, ~~(2)~~, (ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under § 54-524.93 ~~(e)~~ this section, and ~~(3)~~ (iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be are required in regulations issued under the federal act.

~~(m)~~ 13. If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

~~(n)~~ Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter; provided that if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the Board.

Drafting note: There is no change in the law.

§ 54.1-3463. § 54-524.94. Exemption of drugs dispensed by filling or refilling prescription.—~~(a)~~ A. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of § 54-524.93 § 54.1-3462 except subsections ~~(a)~~, ~~(i)~~ and ~~(j)~~ subdivisions 1, 9, and 10, and the packaging requirements of subsection ~~(g)~~ subdivision 7, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription.

~~(b)~~ Nothing in this B. This section shall not be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

Drafting Note: There is no change in the law.

§ 54.1-3464. § 54-524.96. Adulterated cosmetics.—A cosmetic shall be deemed to be adulterated:

~~(a)~~ 1. If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this. This provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution - This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this paragraph subdivision and paragraph ~~(e)~~ subdivision 5, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

~~(b)~~ 2. If it consists in whole or in part of any filthy, putrid, or decomposed substance;

~~(c)~~ 3. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

~~(d)~~ 4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

~~(e)~~ 5. If it is not a hair dye, and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act or § 54-524.91 § 54.1-3460.

Drafting Note: There is no change in the law.

§ 54.1-3465. § 54-524.97. Misbranded cosmetics.—A cosmetic shall be deemed to be

misbranded:

(a) 1. If its labeling is false or misleading in any particular;

(b) 2. If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor ; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count ; ~~provided, that under clause (2) of this paragraph .~~ However, reasonable variations shall be permitted, and exemptions as to for small packages shall be established by regulations prescribed by the Board;

(c) 3. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness { , as compared with other words, statements, designs, or devices, in the labeling } , and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) 4. If its container is so made, formed or filled as to be misleading;

(e) 5. If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive ~~prescribed~~ under the provisions of the federal act. This ~~paragraph subdivision~~ shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes { as defined in the last sentence of § 54-524.96 (a) } .

(f) A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter while it is in transit in commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this chapter.

Drafting Note: There is no change in the law.

§ 54-524.89. ~~Institution of criminal proceedings. It shall be the duty of each Commonwealth attorney to whom the Board president or his designee and the Director of the Department of Health Regulatory Boards report any violation of this chapter to act without delay to make any required investigation and, if appropriate, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.~~

Drafting Note: This section does not appear necessary as the Commonwealth's attorneys already have a duty to prosecute crimes.

Article 7.

Controlled Paraphernalia.

§ 54.1-3466. ~~§ 54-524.100.1.~~ Possession or distribution of controlled paraphernalia; meaning of controlled paraphernalia; evidence; ~~section inapplicable to certain persons exceptions~~ .—Except as authorized in this chapter, it shall be a misdemeanor for any person or persons to possess or distribute controlled paraphernalia which shall mean a hypodermic syringe, needle or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances which reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug, or gelatin capsules, glassine envelopes or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances which reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include , but not be limited to , close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs such as including, but not limited to , any of the following: scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug or any machine, equipment, instrument, implement, device or combination thereof which is adapted for the production of controlled drugs under circumstances which reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in violation of the provisions of this chapter.

The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article ~~nor~~ or to any person who owns or is engaged in the breeding or raising of livestock, poultry or other

animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; ~~nor~~ or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers or their authorized agents or employees when in the usual course of their business, ~~provided that if~~ the controlled paraphernalia lawfully obtained continues to be used for the legitimate purposes for which they were obtained.

Drafting Note: There is no change in the law.

§ 54.1-3467. ~~§ 54-524.109:2.~~ Distribution of hypodermic needles or syringes, gelatin capsules, quinine or any of its salts.—Distribution by any method ~~whatsoever~~, of any hypodermic needles or syringes, gelatin capsules, quinine or any of its salts, in excess of one-fourth ounce shall be restricted to ~~registered licensed~~ pharmacists or to others who have received a *license* or a permit from the Board.

Drafting Note: There is no change in the law.

§ 54.1-3468. ~~§ 54-524.109:3.~~ Conditions to dispensing device, item, or substance; records.—In dispensing any device, item or substance, the pharmacist or other *licensed or permitted* person referred to in § 54-524.109:2 § 54.1-3467 shall :

(a) 1. Require the person requesting such device, item or substance to furnish suitable identification, including proof of age when appropriate;

(b) 2. Require the person requesting such item, device or substance to furnish written legitimate purposes for which such item, device or substance is being purchased, except in cases of telephone orders for such item, device or substance from customers of known good standing;

(c) 3. At the time of dispensing, make and keep a record showing the date of dispensing, the name and quantity of the device, item or substance, the price at which it was sold, the name and address of the person to whom the device, item or substance was dispensed, the reason for its purchase and enter his initials thereon.

No such devices, substances ~~nor~~ or items shall be sold or distributed to persons under the age of sixteen years except by a physician for legitimate purposes or upon his prescription. ~~Such records~~ *Records* shall be maintained pursuant to § 54-524.56 *this chapter and the Board's regulations* and shall be made available for inspection to any law-enforcement officer or agent of the Board. Persons violating the provisions of this section shall be guilty of a *Class 1* misdemeanor.

Drafting Note: There is no change in the law.

§ 54.1-3469. ~~§ 54-524.109:4.~~ Storage, usage, and disposition of controlled paraphernalia.—Each person, association or corporation which has lawfully obtained possession of any of the controlled paraphernalia mentioned in § 54-524.109:2 § 54.1-3467 shall exercise reasonable care in the storage, usage and disposition of such devices or substances to ~~insure~~ *ensure* that they are not diverted for reuse for any purposes other than those for which they were lawfully obtained ~~and any such~~. Any person who permits or causes, directly or indirectly, such controlled paraphernalia to be used for any other purpose than that for which it was lawfully obtained shall be guilty of a *Class 1* misdemeanor ~~and upon conviction be punished by a fine not exceeding five hundred dollars~~.

Drafting Note: There is no change in the law.

§ 54.1-3470. ~~§ 54-524.109:5.~~ Obtaining controlled paraphernalia by fraud, etc.— (a) A. No person shall obtain or attempt to obtain any item, device or substance referred to in § 54-524.109:2 (a) § 54.1-3467 by fraud, deceit, misrepresentation, or subterfuge ; or (b) by the use of *giving* a false name or the *giving* of a false address.

(b) B. No person shall furnish false or fraudulent information in or omit any information from, or willfully make a false statement in obtaining or attempting to obtain any of the instruments or substances ~~set out in (a) hereof referred to in § 54.1-3467~~.

(c) C. No person shall, for the purpose of obtaining any such instrument or substance, falsely ~~assume the title of, or represent himself claim~~ to be ; a manufacturer, wholesaler, pharmacist, practitioner of the healing arts or veterinarian.

Persons violating the provisions of this section shall be guilty of a *Class 1* misdemeanor.

Drafting Note: There is no change in this law.

§ 54-524.109:6. Application of §§ 54-524.77 and 54-524.78.—The provisions of §§ 54-524.77 and 54-524.78, relating to chemical analyses and disposal of seized drugs shall apply to this article.

mutatis mutandis.

Drafting Note: Sections 54-524.77 and 54-524.78 have been repealed.

~~§ 54.1-3471. § 54-524.109:7. Issuance of permits to certain persons other than registered pharmacists.—The Board shall, upon written application, on a form furnished by the Board, issue a permit to any person other than a registered licensed pharmacist who in the usual course of business sells any item referred to in § 54-524.109:2 § 54.1-3467 as a wholesale distributor or one who distributes at retail to any persons who own or are engaged in the breeding breed or raising of raise livestock, poultry, or other animals to which such items, devices or substances are customarily given to or used upon in the interest of health, safety, or good husbandry. Such This permit shall not authorize the sale or distribution of these items, devices or substances for human use which shall be limited to a registered pharmacist and such the permitted person shall exercise reasonable diligence to assure that the items distributed are not for the purpose of human consumption.~~

Drafting Note: There is no change in the law.

~~§ 54.1-3472. § 54-524.109:8. Article inapplicable to certain persons.—The provisions of this article shall not apply to legitimate distribution by or possession of controlled paraphernalia referred to herein, by the following persons: physicians, dentists, podiatrists, veterinarians, funeral directors and embalmers.~~

Drafting Note: There is no change in the law.

CHAPTER 35.

PROFESSIONAL COUNSELING.

~~§ 54-923. Declaration of policy; legislative intent.—It is declared to be the policy of the Commonwealth of Virginia that the activities of those persons who render services to the public in the behavioral science area be regulated to ensure the protection of the public health, safety and welfare. The Commonwealth also recognizes the fact that the many professions offering these services overlap and intertwine to a substantial degree. This fact results in the need for these professions to work in close harmony with each other to maintain quality service to the citizens and to prevent infringement on the rights of practitioners to engage in their lawful professions, which infringements may harm the public. The system of regulation established herein is intended to provide professional responsibility for the public and harmony among the professions.~~

Drafting Note: All policy or intent sections are being deleted.

~~§ 54.1-3500. § 54-924. Definitions.—As used in this chapter the following terms shall have the following meanings unless the context clearly indicates otherwise requires a different meaning :~~

a. ~~[Repealed.]~~

b. ~~“Department” means the Department of Health Regulatory Boards.~~

c. ~~[Repealed.]~~

d. ~~“Professional board” means the Virginia Board of Professional Counselors, the Virginia Board of Psychology or the Virginia Board of Social Work.~~

e. ~~[Repealed.]~~

~~§ 54-932. Definitions.—As used in this article:~~

a. ~~“Professional counselor” means a person trained in counseling and guidance services with emphasis on individual and group guidance and counseling designed to assist individuals in achieving more effective personal, social, educational and career development and adjustment.~~

b. ~~“Certified substance abuse counselor” means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program and/or facility.~~

c. ~~[Repealed.]~~

d. ~~“Practice of counseling” means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, to include:~~

(1) ~~“Counseling,” which means assisting an individual, through the counseling relationship, to~~

develop understanding of personal problems, to define goals, and to plan action reflecting his interests, abilities, aptitudes, and needs as these are related to educational progress, occupations and careers, and personal-social concerns. scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements and interests, and shall not include the use of projective techniques in the assessment of personality.

(3) "Counseling, guidance and personnel consulting," which mean interpreting or reporting upon scientific fact or theory in counseling, guidance and personnel services to provide assistance in solving some current or potential problems of individuals, groups, or organizations.

(4) "Referral activities," which mean the evaluating of data to identify problems and to determine advisability of referral to other specialists.

"Appraisal activities" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements and interests, and shall not include the use of projective techniques in the assessment of personality.

"Board" means the Board of Professional Counselors.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Counseling" means assisting an individual, through the counseling relationship, to develop understanding of personal problems, to define goals, and to plan action reflecting his interests, abilities, aptitudes, and needs as these are related to educational progress, occupations and careers, and personal-social concerns.

"Counseling, guidance and personnel consulting" means interpreting or reporting upon scientific fact or theory in counseling, guidance and personnel services to provide assistance in solving some current or potential problems of individuals, groups, or organizations.

"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, which shall include appraisal activities, counseling, guidance and personnel consulting and referral activities.

"Professional counselor" means a person trained in counseling and guidance services with emphasis on individual and group guidance and counseling designed to assist individuals in achieving more effective personal, social, educational and career development and adjustment.

"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.

Drafting Note: There is no change in the law.

§ 54.1-3501. § 54-944. Exemption from requirements of licensure or certification .--The requirements for licensure or certification provided for in this chapter shall not be applicable to:

(a) 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories provided for in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and provided that the person rendering such service is not held out, by himself or otherwise, as a licensed or certified practitioner.

(b) 2. The activities or services of a student pursuing a course of study in counseling ; psychology, school psychology or social work in an institution accredited by a regional accrediting agency approved recognized by the State Board United States Secretary of Education or under the supervision of a practitioner licensed or certified under this chapter ; provided that , if such activities or services constitute a part of his or her course of study and are adequately supervised.

(c) 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and for which no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and when the person rendering service remains accountable to the its established authority thereof .

~~(d)~~ 4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization ; ~~except that~~ . Any such person who renders psychological services, as defined in § 54-936 Chapter 36 (§ 54.1-3600 et seq.) of this title , shall be ~~(i)~~ supervised by a licensed psychologist or clinical psychologist; ~~(ii)~~ certified by the Department of Education as a school psychologist; or ~~(iii)~~ employed by a school for the handicapped which is certified by the Board of Education subject to the requirements of that chapter . Any such person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure or certification .

(e) 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.

Drafting Note: There is no change in the law.

§ 54.1-3502. § 54-945. Administration or prescription of drugs not permitted.— Nothing in this Chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 12 (§ 54-273 et seq.) 29 (§ 54.1-2900 et seq.) of this title.

Drafting Note: There is no change in the law.

§ 54-946. Compliance by persons in newly regulated occupations.—Those persons whose occupations were not previously either eligible or required to be licensed or certified and who now fall under the purview of this chapter will have until January 1, 1978 to comply with the appropriate provisions of this chapter.

Drafting Note: This section does not appear necessary.

§ 54.1-3503. § 54-933. Virginia Board of Professional Counselors.—The Virginia Board of Professional Counselors is hereby continued. The Board shall have such powers and duties as are granted it under this chapter for the purpose of regulating regulate the practice of counseling.

The Board shall consist of nine members, seven of whom shall be professional counselors licensed in Virginia, representing the following who shall represent the various specialties recognized in the profession : clinical mental health, marriage and family, pastoral, rehabilitation and substance abuse . The professional members of the Board shall include two full-time faculty members engaged in teaching counseling in an accredited college or university in this Commonwealth, two counselors engaged in full-time private practice and one certified substance abuse counselor. In addition, two citizen members shall be appointed to the Board.

The terms of the members of the Board shall be four years.

Drafting Note: Although the specialties are no longer listed, there is no change in the law.

§ 54-928. Membership of professional boards; terms; removal.—The professional boards operating under this chapter shall consist of those members appointed by the Governor as provided in this chapter. Appointments to fill vacancies created by death, resignation or removal shall be for the remainder of the unexpired term; and no member may serve for more than two full terms. The Governor may remove any member of any board for cause, and the Governor shall be the sole judge of the sufficiency of the cause for removal.

Drafting Note: This section is not necessary (See § 54.1-107 and § 2.1-43).

§ 54.1-3504. § 54-933.2. Nominations by the Virginia Counselors Association and the Virginia Mental Health Counselors Association .— Each professional appointment to the Board Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Counselors Association and the Virginia Mental Health Counselors Association by June 1 of each year . The Governor may notify such organizations promptly of any professional vacancy other than by expiration and like nominations may be made by such organizations for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees.

Drafting Note: There is no change in the law.

§ 54.1-3505. § 54-929. Specific powers and duties of professional boards the Board .— Each professional board operating under this chapter In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

a. To promulgate regulations necessary to administer effectively the regulatory system

administered by the professional board.

b. To promulgate qualifications necessary for licensure, certification, or designation under this chapter.

c. To evaluate the qualifications of individuals applying to it for licensure or certification. Such evaluation may include the preparation and administration of examinations.

d. To hire independent examiners and/or to establish examining committees.

e. To license, certify or designate all persons who successfully meet the qualifications developed by the appropriate professional board. Only a majority vote of the appropriate professional board shall be necessary for such action.

f. To investigate complaints concerning the conduct of any person whose activities are regulated by the professional board.

g. To revoke, suspend or fail to renew a certificate or license which it has authority to issue for just causes as enumerated in appropriate rules and regulations of any such board.

h. To establish a canon of ethics.

i. 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.

j. [Repealed.]

k. 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

l. To assess fees for certification, licensure or renewal thereof sufficient to cover the administrative and operating expenses of the board.

3. To designate specialties within the profession.

§ 54-931. Designation of specialties.—The professional boards operating under this chapter may provide for the designation of specialties within their professional fields.

Drafting Note: This section consolidates §§ 54-929 and 54-931. There is no change in the law (See § 54.1-2400).

§ 54.1-3506. § 54-935.1. License required.—In order to engage in the practice of counseling as defined in § 54-932 (d), *this chapter* it shall be necessary to hold a requisite valid license.

Drafting Note: There is no change in the law.

§ 54-933.1. Provisional licensure for certain persons. In any case in which all of the qualifications for licensure have been met except the requirements for supervised experience or specific course work, the Board of Professional Counselors may grant provisional licensure or certification to practice to persons holding doctorate degrees from accredited institutions of higher education in counseling for a period equal to the experiential requirement. Such provisional licensure or certification shall be renewable at the Board's discretion. Provisional licensed or certified persons shall practice only under the supervision of a licensed or certified counselor.

Drafting Note: This section has been deleted because it is unnecessary.

§ 54-935. License without examination.—Any person certified as a guidance and personnel counselor under Chapter 5.2 (§ 54-102.15 et seq.), Title 54 shall, upon proper application made prior to June 30, 1981, be licensed to practice as a professional counselor.

Drafting Note: This section is no longer necessary.

CHAPTER 36.

PSYCHOLOGY.

§ 54-923. Declaration of policy; legislative intent.—It is declared to be the policy of the Commonwealth of Virginia that the activities of those persons who render services to the public in the behavioral science area be regulated to ensure the protection of the public health, safety and welfare. The Commonwealth also recognizes the fact that the many professions offering

these services overlap and intertwine to a substantial degree. This fact results in the need for these professions to work in close harmony with each other to maintain quality service to the citizens and to prevent infringement on the rights of practitioners to engage in their lawful professions, which infringements may harm the public. The system of regulation established herein is intended to provide professional responsibility for the public and harmony among the professions.

Drafting Note: Policy or intent sections are being deleted.

§ 54.1-3600. § 54-936. Definitions.—As used in this article *chapter unless the context requires a different meaning* :

“Psychologist” shall mean a person trained in the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment.

“School psychologist” shall mean a person who specializes in problems manifested in and associated with educational systems and who utilizes psychological concepts and methods in programs or actions which attempt to improve learning conditions for students or who is employed in this capacity by a public or nonprofit educational institution or who offers to render such services to the public whether or not employed by such an institution.

“Clinical psychologist” means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions, or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures, including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. Nothing in this definition shall be construed to limit or restrict any person licensed by a board as defined in § 54-950 from rendering services which they are licensed to provide.

“Board” means the Board of Psychology.

“Clinical psychologist” means a psychologist who is competent in the diagnosis, prevention, treatment and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. This definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which they are licensed to provide.

“Practice of clinical psychology” means the offering by an individual of his services to the public as a clinical psychologist.

“Practice of psychology” shall mean means the rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the science and profession of psychology, and which includes, but is not limited to:

1. “Measuring and testing,” which consists of the psychological assessment and evaluation of abilities, attitudes, aptitudes, achievements, adjustments, motives, personality dynamics or other psychological attributes of individuals, or groups of individuals by means of standardized measurements or other methods, techniques or procedures recognized by the science and profession of psychology.

2. “Counseling and psychotherapy,” which consists of the application of principles of learning and motivation in an interpersonal situation with the objectives of modification of perception and adjustment ; , consisting of highly developed skills, techniques, and methods of altering through learning processes, attitudes, feelings, values, self-concept, personal goals and adaptive patterns.

3. “Psychological consulting,” which consists of interpreting or reporting upon scientific fact or theory in psychology, rendering expert psychological opinion, psychological evaluation, or engaging in applied psychological research.

The “practice of school psychology” shall mean means the rendering or offering to render to individuals, groups, organizations, government agents or the public any of the following services:

1. “Testing and measuring” which consists of psychological assessment, evaluation and diagnosis relative to the assessment of intellectual ability, aptitudes, achievement, adjustment, motivation, personality or any other psychological attribute of persons as individuals or in groups

that directly relates to learning or behavioral problems in an educational setting.

2. "Counseling" which consists of professional advisement and interpretive services with children or adults for amelioration or prevention of educationally related problems.

(a) Counseling services relative to the practice of school psychology include but are not limited to the procedures of verbal interaction, interviewing, behavior modification, environmental manipulation and group processes.

(b) Counseling services relative to the practice of school psychology are short-term and are situation oriented.

3. "Consultation" which consists of educational or vocational consultation or direct educational services to schools, agencies, organizations or individuals. Consultation as herein defined is directly related to learning problems and related adjustments.

4. Development of programs such as designing more efficient and psychologically sound classroom situations and acting as a catalyst for teacher involvement in adaptations and innovations.

f. The "practice of clinical psychology" means the offering by an individual of his services to the public as a clinical psychologist.

"Psychologist" means a person trained in the application of established principles of learning, motivation, perception, thinking and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment.

"School psychologist" means a person who specializes in problems manifested in and associated with educational systems and who utilizes psychological concepts and methods in programs or actions which attempt to improve learning conditions for students or who is employed in this capacity by a public or nonprofit educational institution or who offers to render such services to the public whether or not employed by such an institution.

Drafting Note: This section has been revised; however, there is no change in the law.

§ 54.1-3601. ~~§ 54-044.~~ Exemption from requirements of licensure ~~or certification~~ .—The requirements for licensure ~~or certification~~ provided for in this chapter shall not be applicable to:

(a) 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories ~~provided for~~ in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and ~~provided that~~ the person rendering such service is not held out, by himself or otherwise, as a licensed ~~or certified~~ practitioner.

(b) 2. The activities or services of a student pursuing a course of study in ~~counseling,~~ psychology ; or school psychology ~~or social work~~ in an institution accredited by a regional accrediting agency ~~approved~~ ~~recognized~~ by the State ~~Board~~ United States Secretary of Education or under the supervision of a practitioner licensed or certified under this chapter ; ~~provided that~~ , if such activities or services constitute a part of his ~~or her~~ course of study and are adequately supervised.

(c) 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and ~~for which~~ no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and ~~when~~ the person rendering service remains accountable to ~~the~~ its established authority ~~thereof~~ .

(d) 4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization, except that any such person who renders psychological services, as defined in § ~~54-036~~ this chapter , shall be (i) supervised by a licensed psychologist or clinical psychologist; (ii) certified by the Department of Education as a school psychologist; or (iii) employed by a school for the handicapped which is certified by the Board of Education. Any ~~such~~ person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the *licensure* requirements ~~for licensure or certification~~ .

(e) 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.

Drafting Note: There is no change in the law.

~~§ 54.1-3602. § 54-945. Administration or prescription of drugs not permitted.— Nothing in this~~ This chapter shall *not* be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 12 (~~§ 54-273 et seq.~~) 29 (~~§ 54.1-2900 et seq.~~) of this title.

Drafting Note: There is no change in the law.

~~§ 54-946. Compliance by persons in newly regulated occupations.—Those persons whose occupations were not previously either eligible or required to be licensed or certified and who now fall under the purview of this chapter will have until January 1, 1978 to comply with the appropriate provisions of this chapter.~~

Drafting Note: This section is not necessary.

~~§ 54.1-3603. § 54-937. Virginia Board of Psychology; membership.—The Virginia Board of Psychology is hereby continued. The Board shall have the powers and duties granted it under this chapter for the purpose of regulating~~ regulate the practice of psychology and school psychology. The membership of the Board shall be representative of the practices of psychology and shall consist of seven members as follows: two persons who are licensed as psychologists and also licensed by the Board of Medicine as clinical psychologists, one person licensed as a school psychologist, one person licensed as a psychologist who specializes in counseling psychology, one *other* person licensed as a psychologist having any specialty recognized in this article , and two citizen members. At least one of the five professional members of the Board shall be a member of the faculty at an accredited college or university in this Commonwealth actively engaged in teaching psychology. ~~As the terms of office expire by limitation, the Governor shall appoint, to fill the vacancies so occasioned, qualified persons.~~ The terms of the members of the Board shall be five years.

Drafting Note: There is no change in the law.

~~§ 54.1-3604. § 54-937.1. Nominations by professional organizations. — Each professional appointment to the Board~~ Nominations for professional members may be made from a list of at least ~~four~~ three names for each vacancy submitted to the Governor by the Virginia Psychological Association, the Virginia Academy of Clinical Psychologists, the Virginia Counseling Psychologists Association and the Virginia Association of School Psychologists by June 1 of each year . The Governor may notify such organizations promptly of any professional vacancy other than by expiration and like nominations may be made by such organizations for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees.

Drafting Note: There is no change in the law except that three names may be submitted instead of four to be consistent with other provisions.

~~§ 54.1-3605. § 54-929. Specific powers and duties of professional boards~~ the Board .— Each professional board operating under this chapter In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

a. To promulgate regulations necessary to administer effectively the regulatory system administered by the professional board.

b. To promulgate qualifications necessary for licensure, certification, or designation under this chapter.

c. To evaluate the qualifications of individuals applying to it for licensure or certification. Such evaluation may include the preparation and administration of examinations.

d. To hire independent examiners and/or to establish examining committees.

e. To license, certify or designate all persons who successfully meet the qualifications developed by the appropriate professional board. Only a majority vote of the appropriate professional board shall be necessary for such action.

f. To investigate complaints concerning the conduct of any person whose activities are regulated by the professional board.

g. To revoke, suspend or fail to renew a certificate or license which it has authority to issue

for just causes as enumerated in appropriate rules and regulations of any such board.

h. To establish a canon of ethics.

i. 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.

j. [Repealed.]

k. 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

l. To assess fees for certification, licensure or renewal thereof sufficient to cover the administrative and operating expenses of the board.

3. To designate specialties within the profession.

§ 54-931. Designation of specialties.—The professional boards operating under this chapter may provide for the designation of specialties within their professional fields.

Drafting Note: This section consolidates §§ 54-929 and 54-931. There is no change in the law (See § 54.1-2400).

§ 54.1-3606. § 54-939.1. License required.—In order to engage in the practice of psychology, school psychology, or clinical psychology, it shall be necessary to hold a requisite valid license.

Drafting Note: There is no change in the law.

§ 54.1-3607. § 54-938. Licenses and certificates continued.—All licenses and certificates heretofore issued under the provisions of Chapter 5.1 (§ 54-102.1 et seq.) of Title 54 by the Board of Psychology or its predecessors shall continue in effect.

Drafting note: There is no change in the law.

§ 54.1-3608. § 54-939. License as clinical psychologist.—The candidate for licensure as a clinical psychologist shall be recommended *after investigation and examination* by the Virginia Board of Psychology to the State Board of Medicine from which all instructions regarding the administration of such license will thereafter be secured for licensure and subsequent regulation

Drafting Note: There is no change in the law.

CHAPTER 37.

SOCIAL WORK.

§ 54-923. Declaration of policy; legislative intent.—It is declared to be the policy of the Commonwealth of Virginia that the activities of those persons who render services to the public in the behavioral science area be regulated to ensure the protection of the public health, safety and welfare. The Commonwealth also recognizes the fact that the many professions offering these services overlap and intertwine to a substantial degree. This fact results in the need for these professions to work in close harmony with each other to maintain quality service to the citizens and to prevent infringement on the rights of practitioners to engage in their lawful professions, which infringements may harm the public. The system of regulation established herein is intended to provide professional responsibility for the public and harmony among the professions.

Drafting Note: Policy or intent sections are being deleted.

§ 54.1-3700. § 54-941. Definitions.—As used in this article chapter unless the context requires a different meaning :

a. "Social worker" means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

b. "Clinical social worker" shall mean a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

c. The "practice of social work" means rendering or offering to render to individuals,

families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the "practice of social work." Subject to the foregoing, the disciplined application of social work values, principles and methods includes but is not restricted to the following:

(1) through (3) [Repealed.]

(4) "Casework management and supportive services" shall mean assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination of services.

(5) "Casework" shall mean both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

(6) "Group work" shall mean helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group's purpose, function, and structure.

(7) "Planning and community organization" shall mean helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

(8) "Administration" shall mean the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

(9) "Consultation and education" shall mean program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff development activities, seminars, and workshops using social work principles and theories of social work education.

(10) "Research" shall mean the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

"Administration" means the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

"Board" means the Board of Social Work.

"Casework" means both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

"Casework management and supportive services" means assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination of services.

"Clinical social worker" means a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

“Consultation and education” means program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff development activities, seminars, and workshops using social work principles and theories of social work education.

“Group work” means helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group’s purpose, function, and structure.

“Planning and community organization” means helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

“Practice of social work” means rendering or offering to render to individuals, families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the “practice of social work.” Subject to the foregoing, the disciplined application of social work values, principles and methods includes, but is not restricted to, casework management and supportive services, casework, group work, planning and community organization, administration, consultation and education, and research.

“Research” means the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

“Social worker” means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

Drafting Note: There is no change in the law.

~~§ 54.1-3701. § 54-944. Exemption from requirements of licensure or certification .—The requirements for licensure or certification provided for in this chapter shall not be applicable to:~~

~~(a) 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories provided for in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and provided that the person rendering such service is not held out, by himself or otherwise, as a licensed or certified practitioner.~~

~~(b) 2. The activities or services of a student pursuing a course of study in counseling, psychology, school psychology or social work in an institution accredited by a regional accrediting agency approved recognized by the State Board of Education Board for purposes of licensure upon completion of the course of study or under the supervision of a practitioner licensed or certified under this chapter; provided that if such activities or services constitute a part of his or her course of study and are adequately supervised.~~

~~(c) 3. The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and for which no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and when the person rendering service remains accountable to the its established authority thereof .~~

~~(d) 4. Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization ; except that . Any such person who renders psychological services, as defined in § 54-936 Chapter 36 (§ 54.1-3600 et seq.) of this title , shall be (i) supervised by a licensed psychologist or clinical psychologist; (ii) certified by the Department of Education as a school psychologist; or (iii) employed by a school~~

for the handicapped which is certified by the Board of Education *subject to the requirements of that chapter* . Any such person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure or certification .

(e) 5. Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.

Drafting Note: There is no change in the law.

§ 54.1-3702. § 54-945. Administration or prescription of drugs not permitted.— ~~Nothing in this~~ This chapter shall *not* be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 12 (~~§ 54-273 et seq.~~) 29 (*§ 54.1-2900 et seq.*) of this title.

Drafting Note: There is no change in the law.

§ 54-946. ~~Compliance by persons in newly regulated occupations.—Those persons whose occupations were not previously either eligible or required to be licensed or certified and who now fall under the purview of this chapter will have until January 1, 1978 to comply with the appropriate provisions of this chapter.~~

Drafting Note: This section does not appear necessary.

§ 54.1-3703. § 54-942. Virginia Board of Social Work; members.—~~The Virginia Board of Social Work is hereby continued. It shall have the powers and duties granted it under this chapter for the purpose of regulating~~ regulate the practice of social work.

The Board shall be composed of seven members, five of whom shall be licensed social workers who have been in active practice of social work for ~~not less than~~ at least five years prior to appointment and two of whom shall be citizen members. The terms of the members of the Board shall be five years.

Drafting Note: There is no change in the law.

§ 54.1-3704. § 54-942.1. Nominations by the Virginia Chapter of the National Association of Social Workers and the Virginia Society for Clinical Social Work .— ~~Each professional appointment to the Board~~ Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Chapter of the National Association of Social Workers and by the Virginia Society for Clinical Social Work by June 1 of each year . The Governor may notify such organizations promptly of any professional vacancy other than by expiration and like nominations may be made by such organizations for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees.

Drafting Note: There is no change in the law.

§ 54.1-3705. § 54-929. Specific powers and duties of professional boards the Board .— ~~Each professional board operating under this chapter~~ In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

a. To promulgate regulations necessary to administer effectively the regulatory system administered by the professional board.

b. To promulgate qualifications necessary for licensure, certification, or designation under this chapter.

c. To evaluate the qualifications of individuals applying to it for licensure or certification. Such evaluation may include the preparation and administration of examinations.

d. To hire independent examiners and/or to establish examining committees.

e. To license, certify or designate all persons who successfully meet the qualifications developed by the appropriate professional board. Only a majority vote of the appropriate professional board shall be necessary for such action.

f. To investigate complaints concerning the conduct of any person whose activities are regulated by the professional board.

g. To revoke, suspend or fail to renew a certificate or license which it has authority to issue for just causes as enumerated in appropriate rules and regulations of any such board.

h. To establish a canon of ethics.

i. 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.

j. ~~[Repealed.]~~

k. 2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.

l. To assess fees for certification, licensure or renewal thereof sufficient to cover the administrative and operating expenses of the board.

3. To designate specialties within the profession.

~~§ 54-931. Designation of specialties.—The professional boards operating under this chapter may provide for the designation of specialties within their professional fields.~~

Drafting Note: This section consolidates §§ 54-929 and 54-931. There is no change in the law (See § 54.1-2400).

~~§ 54.1-3706. § 54-943.1. License required.—In order to engage in the practice of social work, it shall be necessary to hold a requisite valid license.~~

Drafting Note: No change in the law.

~~§ 54.1-3707. § 54-943. Licenses and certificates continued.—All licenses and certificates heretofore issued under the provisions of Chapter 18.1 (§ 54-775.1 et seq.) of Title 54 by the Board of Social Work and its predecessors shall continue in effect, and be renewable under this chapter.~~

Drafting Note: There is no change in the law.

CHAPTER 38.

VETERINARY MEDICINE.

~~§ 54.1-3800. § 54-786. What constitutes Practice of veterinary medicine.—Any person shall be regarded as practicing veterinary medicine within the meaning of this chapter who professes publicly to be represents himself, directly or indirectly, publicly or privately, as a veterinary doctor and offers for practice as such ; or uses any title, words, abbreviation or letters in a manner or under circumstances which may reasonably induce the belief that the person using them is qualified to practice veterinary medicine.~~

~~Any person shall be deemed to be practicing veterinary medicine who ; for hire, fee, compensation or reward, promised, offered, received or expected, either directly or indirectly, diagnoses, prognoses, treats, administers any drug, medicine or other treatment, prescribes, operates or manipulates, or applies any apparatus or appliance for the prevention, cure, or relief of any disease, pain, deformity, defect, injury, wound or physical condition of an animal, or for the prevention of, or to test for the presence of, any disease of an animal, or performs a surgical, medical or dental procedure or renders surgical, medical or dental aid to, for or upon an animal; or who holds himself out as being legally qualified or authorized to do so; or who uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person so using them is engaged in or legally qualified or authorized to engage in the practice of veterinary medicine performs the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions; including the performance of surgery or dentistry, the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for embryo transfer, for testing for pregnancy, or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above .~~

Drafting note: § 54-786 is being separated into two sections, §§ 54.1-3800 and 54.1-3801.

~~§ 54.1-3801. Exceptions. — But nothing in this This chapter shall not apply to any person performing procedures on his own animals, to any employee performing procedures on the animals of his employer (i) the owner of an animal and the owner's full-time, regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for the purpose of circumventing the requirements of this chapter , or to veterinarians duly licensed in other states called in actual consultation or to attend a case in this State Commonwealth who do not open an office or appoint a place to practice within this~~

State Commonwealth , or to veterinarians employed by the United States or by this State Commonwealth while actually engaged in the performance of their official duties ; or to any employee of this State while engaged in the performance of an official duty related to research or education or in connection with the National Poultry Improvement Plan .

Drafting Note: See drafting note for the previous section.

§ 54.1-3802. § 54-776. Board of Veterinary Examiners continued *Medicine; appointment; officers; etc.* — The Board of Veterinary Examiners is continued and shall hereafter be known as the Virginia Board of Veterinary Medicine. As used in this chapter, "Board" means the Virginia Board of Veterinary Medicine.

§ 54-777. Appointment, qualifications and terms of members.— The Board of Veterinary Medicine shall consist of six members ; to be appointed by the Governor, who shall fill all vacancies occurring on the Board. Five as follows: five members shall be licensed veterinarians and one member shall be a citizen member.

As the terms of office respectively of the professional members expire by limitation, there being one expiration each year, the Governor shall appoint, to fill the professional vacancies so occasioned, qualified persons who are licensed veterinarians and learned in the science of veterinary medicine and surgery. The terms of the members of the Board shall be for five years from the day on which that of their immediate predecessors expired .

§ 54-783. Officers of Board. The officers of the Board shall be *annually elect* a president, vice-president and secretary (who shall also act as treasurer); such officers to be members of and selected by the Board .

§ 54-784. Meetings of Board; quorum. Regular meetings of The Board shall be held *meet at least once annually* at such times and places as the Board *it* may prescribe ; and . Special meetings may be held upon the call of the president and any three members ; but there shall not be less than one regular meeting each year . Four members of the Board shall constitute a quorum.

Drafting Note: This section consolidates §§ 54-776, 54-777, 54-783 and 54-784.

§ 54-779. Limitation on terms.—No person shall be eligible to serve for or during more than two successive terms, and incumbency during the term in effect on June 24, 1944, constitutes the first of the two successive terms with respect to eligibility for appointment.

Drafting note: This section is no longer necessary. See general provisions for the Title.

§ 54-780. Removal of member. The Governor may remove any member of the Board for misconduct, incapacity, or neglect of duty and he shall be the sole judge of the sufficiency of the cause for removal. He shall report every such removal at once to the General Assembly if it is in session, and if not at the beginning of the next session.

Drafting note: This section is not necessary.

§ 54-781. Ceasing to reside in State vacates office. If any member of the Board ceases to reside in this State his office shall be deemed vacant.

Drafting note: This section is not necessary. See the general provisions.

§ 54-782. Oath of office. The members of such Board shall qualify by taking the usual oath of office before the circuit court of the county or corporation court of the city in which they respectively reside, or before the judge of such court in vacation.

Drafting note: Oaths are required by § 49-1.

§ 54.1-3803. § 54-777.1. Nominations by the Virginia Veterinary Medical Association .— Each professional appointment to the Board *Nominations of professional members* may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Veterinary Medical Association by June 1 of each year . The Governor may notify such organization promptly of any professional vacancy other than by expiration and like nominations may be made by such organization for the filling of the vacancy . In no case shall the Governor be bound to make any appointment from among the nominees.

Drafting Note: There is no change in the law. All nomination sections are being conformed.

§ 54.1-3804. § 54-784.03. Specific powers of Board. *The In addition to the powers granted in § 54.1-2400, the Board shall have the power and authority following specific powers and duties :*

1. To establish the qualifications necessary for licensure to practice veterinary medicine in this State, which shall include graduation from an accredited college or university program of veterinary medicine approved by the Board and to establish the qualifications necessary to act

as an animal technician in this State, which may include graduation from a college or university program for animal technicians or a program approved by the Board.

2. 1. To establish essential requirements and standards for approval of such *veterinary* programs.

3. To examine the qualifications of applicants for licensure and certification and determine whether they are possessed of the skill and knowledge to practice veterinary medicine or to act as animal technician.

4. To grant licenses to practice veterinary medicine and certificates to act as animal technician to persons who qualify therefor and to require the renewal of such licenses and certificates.

5. To establish and collect fees for licenses and certificates and the renewal thereof that are sufficient to cover the expenses of the Board.

6. 2. To establish ; supervise, regulate, maintain and control *monitor* programs for the practical training of qualified students of veterinary medicine or animal *veterinary* technology duly enrolled in college or university programs of veterinary medicine or animal *veterinary* technology approved by the Board .

7. 3. To regulate, inspect and register all establishments and premises wherein or whereon *where* veterinary medicine is practiced.

8. To prescribe reasonable standards of conduct and ethics for the practice of veterinary medicine and for animal technicians.

9. To ensure that each person licensed or certified by the Board is conducting his practice in a competent manner and in compliance with the regulations promulgated by the Board.

10. To employ a suitable person or persons to assist it in any necessary investigations of complaints filed with it of violations of this chapter or allegations of grounds enumerated in § 54-786.4 and to perform such other duties as the Board may prescribe.

11. To subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

12. To adopt bylaws for its governance.

13. To adopt such regulations to carry out and enforce the provisions of this chapter as may be necessary.

14. To perform such other acts and to exercise such other powers and duties as may be provided by law or as may be necessary to carry out the powers conferred in this chapter.

Drafting Note: There is no change in the law (See §§ 54.1-2400 and 54.1-2506).

§ 54.1-3805. § 54-786.2. Practice of veterinary medicine restricted *License required* .--No person shall practice veterinary medicine or as a *veterinary technician* in this State *Commonwealth* unless such person has a license to ~~do so~~ *issued been licensed* by the Board.

Drafting Note: There is no change in the law.

§ 54.1-3806. § 54-786.3. Certified animal *Licensed veterinary technicians*.--The Board may ~~certify animal license~~ *certify* *licensed veterinary technicians* to perform, in the employ of a person licensed to practice veterinary medicine and under his immediate and direct supervision and control, acts relating to maintenance of the health of or treatment of any animal. ~~No~~ A person *certified licensed* as an animal *a veterinary technician* may *not* receive compensation for such acts other than such salary as he may be paid by the employing veterinarian. No person ~~certified licensed~~ as an animal *a veterinary technician* may perform surgery, diagnose or prescribe medication for any animal.

Drafting Note: There is no change in the law.

§ 54.1-3807. § 54-786.4. Refusal to grant and to renew; revocation and suspension of licenses and certificates ; ~~monetary penalties~~ .--The Board may refuse to grant or to renew, may suspend or revoke any license to practice veterinary medicine or ~~certificate~~ *certificate* to act *practice* as an animal *a veterinary technician* issued by it and, if the applicant for or holder of such license or ~~certificate~~ *certificate* is not ~~eriminally~~ *eriminally* prosecuted, impose a monetary penalty not in excess of \$500 if such

applicant or holder:

1. Has been adjudicated legally incompetent by reason of mental illness; or
2. Habitually uses drugs or intoxicants; or
3. 1. Knowingly and willfully commits any act which is *Is convicted of a any felony under the laws of this State or of the United States or any act which is a of any misdemeanor under such laws and involves involving moral turpitude;* or
4. Has obtained the license or certificate by fraud or misrepresentation, either in the application therefor or in passing the examination therefor ; or
5. 2. Has been guilty of employing or permitting *Employs or permits* any person who does not hold a license to practice veterinary medicine or a certificate to act to practice as a certified animal licensed veterinary technician issued by the Board to perform work which can lawfully be done only performed only by a person holding the appropriate license or certificate issued by the Board ; or
6. 3. Willfully violates any provision of this chapter or any regulation of the Board; or
7. 4. Has violated any federal or State state law relating to controlled substances as defined in § 54-524.2 Chapter 36 (§ 54.1-3600 et seq.) of this Title ; or
8. 5. Is guilty of unprofessional conduct as defined by regulations of the Board; or
9. 6. Practices veterinary medicine in such a manner as to endanger the health and welfare of his patients or the public; or is unable to practice veterinary medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of *Uses alcohol or drugs ; narcotics, chemicals or any other type of material or as a result of to the extent such use renders him unsafe to practice or suffers from any mental or physical condition rendering him unsafe to practice ;* or
10. Has had his license to practice veterinary medicine or certificate to act as animal a veterinary technician in any other state revoked or suspended.

Drafting Note: There is no change in the law. See § 54.1-2400 for general powers of regulatory boards.

§ 54.1-3808. § 54-786.5. Procedures; summary suspension.— A. The provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall govern proceedings pursuant to § 54-786.4.

B. A. An allegation of any of the grounds enumerated in § 54-786.4 § 54.1-3807 shall be made in writing to the Board.

C. B. The Board may suspend a license to practice veterinary medicine, a certificate license to act as a certified animal veterinary technician, or a permit to operate an animal facility without a hearing, simultaneously with the institution of proceedings for a hearing, if it finds that there is a substantial danger to the public health or safety which warrants this action.

The Board may meet by telephone conference call when summarily suspending a license, if a good faith effort to assemble a quorum of the Board has failed and in the judgment of a majority of the members of the Board, the continued practice of the practitioner constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

Drafting Note: There is no change in the law. The APA is made applicable to all appeals through § 54.1-109.

§ 54.1-3809. § 54-786.6. Penalty for violation .—A. Any violation of a provision of this chapter shall be a Class 1 misdemeanor. Each day of violation shall constitute a separate offense.

B. Any appliances, equipment, drugs and other materials used in violating a provision of this chapter may be seized by the Board and shall be subject to forfeiture upon conviction of a violation of this section.

Drafting Note: The deleted language relates to forfeiture of property for any violation of the chapter.

§ 54-786.7. Injunctions.—In addition to the penalties provided in §§ 54-786.4 and 54-786.6, any

person unlawfully practicing veterinary medicine may be temporarily or permanently enjoined from such unlawful practice by the circuit court of the county or city where such person resides or the unlawful practice occurred at the suit of the Board, any member of the Board or any citizen of this State.

Drafting Note: Injunctions are covered in § 54.1-111.

§ 54.1-3810. § 54-786.8. Report of conviction or injunction to Board.—It shall be the duty of the clerk of the court wherein in which any person is convicted of a violation of this chapter or enjoined from unlawfully practicing veterinary medicine to report the same to the Board.

Drafting Note: There is no change in the law.

§ 54-784.04. Service and execution of process and papers.—Persons employed by the Board pursuant to paragraph 10 of § 54-784.03 are authorized to serve and execute any process issued by a court under the provisions of this chapter and to serve and execute any papers or process issued by the Board under authority of this chapter.

Drafting Note: This authority is included in §§ 54.1-2505 and 54.1-2506.

§ 54-784.02. How fees and penalties applied.—Funds realized from fees for licenses and certificates issued by the Board and the renewal thereof and from any monetary penalties imposed pursuant to § 54-786.4 shall be paid into a special fund and applied to the payment of the expenses of the Board.

Drafting Note: This section is no longer necessary because monetary penalties are included in § 54.1-2401 and fees in § 54.1-2505.

CHAPTER 39.

ATTORNEYS.

Article 1.

General Provisions.

§ 54.1-3900. § 54-42. Who may practice Practice of law; student internship program ; definition .— The following persons may practice law in this State:

All persons Persons who have heretofore obtained, or may hereafter obtain, hold a license to so practice law under the laws of this State, and Commonwealth whose license has not been revoked, and who have paid the license tax prescribed by law may practice law in the Commonwealth .

Any person duly authorized and practicing as counsel or attorney -at-law in any state or territory of the United States, or in the District of Columbia, may for the purpose of attending to any case he may occasionally have in association with a practicing lawyer attorney of this State Commonwealth practice in the courts of this State Commonwealth , in which case no license fee shall be chargeable against such nonresident attorney.

Nothing herein ; however, shall be deemed to prohibit a limited practice of law by third-year law students under an internship program under the supervision of a practicing attorney of law by third-year law students on and after July 1, 1975, pursuant to rules and regulations prescribed, adopted and promulgated by the Supreme Court of Virginia.

Further, nothing herein shall be deemed to prohibit an employee of a state agency in the course of his employment from representing the interests of his agency in administrative hearings before his own or any other state agency, such representation to be limited to the examination of witnesses at administrative hearings relating to personnel matters and the adoption of agency standards, policies, rules and regulations.

As used in this chapter "attorney" means attorney-at-law.

Drafting Note: The reference to July 1, 1975, as the date internship programs for third year law students may start was removed. The name of the chapter is changed from Attorneys-at-law to Attorneys and that change was made throughout the chapter. It was specified that the word attorney means attorney-at-law.

§ 54.1-3901. § 54-42.1. Practice of patent and trademark law. (1) [Repealed.]

(2) A. For the purposes of this section " a lawyer an attorney recognized to practice before the United States Patent and Trademark Office in patent and trademark cases" is defined as anyone who is duly authorized to practice law in any state or territory of the United States, or

the District of Columbia, and who also is also entitled under the rules of that Office to represent another in patent and trademark cases ; and to . The "practice of patent and trademark law" is defined to mean to perform as the performance of all necessary professional services with respect to patent or trademark matters concerning which being recognized to practice before that Office for the performance of such services is required for which a license issued by the United States Patent and Trademark Office is required and ; in addition, embraces includes legal services related to or connected with the practice of patent and trademark law ; and includes the preparation and filing of copyright applications and assignments thereof in the Copyright Office of the Library of Congress.

(2a) B. Any lawyer attorney who is eligible under the preceding provisions subsection A of this section to practice patent and trademark law may be admitted to practice law as an active member of the Virginia State Bar, limited to patent, trademark, copyright and unfair competition causes cases only, under the reciprocity rules promulgated by the Supreme Court of Virginia except that such lawyers attorneys need not be residents of the State Commonwealth so long as they practice full time as a member of the Virginia State Bar. A lawyer An attorney so admitted shall not hold himself out as authorized to practice law generally in Virginia.

(3) C. This section shall not be construed to authorize a person recognized for to practice before the United States Patent and Trademark Office in patent or trademark cases to appear in any court or in any tribunal other than the tribunals of that Office, unless the person is an active member of the Virginia State Bar ; generally or specially as provided in § 54-42.1 (2) nor shall it be construed to limit the admission to practice law as an active member of the Virginia State Bar generally of any person otherwise qualified for such general admission. No lawyer not an active member of the Virginia State Bar, whether or not authorized to practice before that Office in patent or trademark cases, shall be deemed to be admitted to practice patent law within the meaning of §§ 54-42.2 (b) (1) and 54-42.3 (b) (1) or duly licensed or otherwise legally authorized to practice law within the meaning of § 13.1-544 .

(4) [Repealed.]

Drafting Note: The definition of the "practice of patent and trademark law" was rewritten for clarity. The last sentence of subsection C was stricken because a requirement that each employee or agent of a professional law corporation be an active member of the Virginia State Bar was inserted in subdivision 1 of subsection B of § 54.1-3902.

§ 54.1-3902. § 54-42.2. Professional corporations.— (a) A. No professional corporation organized or qualifying under the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 of this Code shall render the professional services of attorneys at law in this State Commonwealth unless such the professional corporation is registered under this section.

(b) B. A professional corporation organized or qualifying under the provisions of Chapter 7 of Title 13.1 of this Code shall be issued a professional corporation registration certificate by the Virginia State Bar upon application and payment of a registration fee of fifty dollars provided that:

(1) 1. Each employee or agent of the professional corporation who will practice law in Virginia is a an active member of the Virginia State Bar and duly licensed to practice law in this Commonwealth, or admitted to practice patent law in this Commonwealth under the provisions of § 54-42.1 (2a) and Rule 1A:2 of the Rules of the Supreme Court of Virginia; , except that nothing herein shall be deemed to prohibit a nonlicensed individual from serving as secretary, treasurer, office manager or business manager of any such corporation; and

(2) 2. The name of the professional corporation and the conduct of its practice conform with the ethical standards which the shareholders and employees are required to observe in the practice of law or patent law in this State Commonwealth not contrary to statute law and providing such corporation must comply with § 13.1-6 (a) of the Code of Virginia relating to its that the corporate name complies with subsection A of § 13.1-630 .

(c) C. Professional corporation registration certificates shall be renewed biennially for a fee of twenty dollars.

Drafting Note: A requirement that each employee or agent of a professional law corporation who will practice law in Virginia be an active member of the Virginia State Bar was inserted because there is already a requirement that such employees be members of the Virginia State Bar and current § 54-42.1 requires that persons admitted to practice patent and trademark law be active members of the Virginia State bar to be an employee or agent of a professional law corporation.

§ 54-42.3. Professional associations. (a) No professional association organized under the

provisions of Chapter 25 (§ 54-873 et seq.) of Title 54 of this Code shall carry on the profession of law or patent law in this State unless such professional association is registered under this section.

(b) A professional association organized under the provisions of Chapter 25 of Title 54 of this Code shall be issued a professional association registration certificate by the Virginia State Bar upon application and payment of a registration fee of fifty dollars; provided that:

(1) All of the associates, directors and officers are duly licensed to practice law or admitted to practice patent law in this State under the provisions of § 54-42.1 (2a) and Rule 1A:2 of the Rules of the Supreme Court in this State; except that nothing herein shall be deemed to prohibit a nonlicensed individual from serving as secretary, treasurer, office manager or business manager of any such association and

(2) The name of the professional association and the conduct of its practice conform with the ethical standards which its associates are required to observe in the practice of law or patent law in this State not contrary to statute law.

(c) Professional association registration certificates shall be renewed biennially for a fee of twenty dollars.

Drafting Note: This section is being repealed because there are no professional associations registered under this section and the chapter allowing the creation of professional associations is being repealed by this recodification. References to professional associations were removed throughout this chapter.

§ 54.1-3903. § 54-43. Attorney to qualify in each court in which he practices; oath; exception. Oath; qualification; proof of licensure or authorization. — Every such person shall produce, before each court in which he intends to practice, satisfactory evidence of his being so licensed or authorized; and take an oath that he will honestly demean himself in the practice of law, and to the best of his ability execute his office of attorney-at-law; and also, when he is licensed in this State, take the oath of fidelity to the Commonwealth; provided, however, that any attorney who has qualified before the Supreme Court of Virginia and who has paid the fee required by the Virginia State Bar up to date, shall be deemed to have qualified in all other courts of the Commonwealth. Before an attorney may practice in any court in the Commonwealth, he shall take the oath of fidelity to the Commonwealth, stating that he will honestly demean himself in the practice of law and execute his office of attorney at law to the best of his ability. An attorney who has qualified before the Supreme Court of Virginia shall be qualified to practice in all courts of the Commonwealth. An attorney who has qualified before a court other than the Supreme Court shall be qualified to practice only in the court which administered his oath.

Each court in which an attorney intends to practice may require the attorney to produce satisfactory evidence of his licensure or authorization.

Drafting Note: This section was rewritten for clarity. Language regarding payment of fees was deleted because proposed § 54.1-3910 (current § 54-49) requires an attorney to be an active member in good standing of the Virginia State Bar in order to practice. To be a member in good standing, an attorney must have paid the required fee.

§ 54.1-3904. § 54-44. Penalty for practicing without authority.— If any Any person shall practice who practices law without being duly authorized or licensed; he shall be guilty of a Class 1 misdemeanor.

Drafting Note: No change in the law. It was specified that the misdemeanor is a Class 1 misdemeanor.

§ 54.1-3905. § 54-44.1. Furnishing advice and services for compensation in connection with certain debt-pooling plans deemed practicing law.— The furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors, except as authorized for nonprofit agencies pursuant to the provisions of § 6.1-363.1, shall be deemed to be the practicing of law. Any person or agency not so authorized or who is not a member of the Virginia State Bar who furnishes or offers to furnish such advice or services for compensation shall be guilty of a Class 1 misdemeanor.

Drafting Note: No change in the law. It was specified that the misdemeanor is a Class 1 misdemeanor.

§ 54-45. Certain officers, etc., forbidden to practice law in particular courts.— If any clerk, sheriff, or sergeant, or any deputy of either, or any person interested in the profits of any such office, shall act as attorney-at-law in any case in any court of which such clerk, sheriff, or sergeant is a member or officer, he shall forfeit \$100.

Drafting Note: This section is being repealed because it is obsolete. Clerks and sheriffs now receive salaries and not a percentage of the fees. Proposed section 54.1-3904 provides that practicing law without a license is a Class 1 misdemeanor. Unlicensed persons can also be proceeded against under the Unauthorized Practice of Law Rules. Licensed attorneys who fall under this section are governed by the Code of Professional Responsibility and the State and Local Government Conflict of Interests Act.

~~§ 54.1-3906. § 54-46. Liability to client.— Every attorney -at-law shall be liable to his client for any damage sustained by him by the client through the neglect of his duty as such attorney. If any attorney received money for his client and fail to pay the same on demand, it may be recovered from him by warrant, or by suit, on motion, according to the amount, and damages Damages in lieu of interest, not exceeding fifteen per centum percent per annum annually until paid, may be awarded against him.~~

Drafting Note: References to the method of recovery were deleted.

~~§ 54.1-3907. § 54-44.2. Reasonable care of attorney in selection of index.— Any attorney -at-law who in the examination of records in the office of the clerk of any court in this State Commonwealth relies upon the correctness of any index found in such office, whether it be is the original index prepared by the clerk or by persons other than the clerk, shall be deemed to have used reasonable care in the selection of the index.~~

Drafting Note: No change in the law.

~~§ 54.1-3908. § 54-47. Liability for words used in proceedings concerning conduct.— No lawyer-attorney ; or association or law corporation composed of lawyers, shall be held liable in any civil action for words written or spoken in any proceeding concerning, or investigation of, the professional conduct of any member of the bar of Virginia before any bar association or committee thereof, unless it be is proved by the plaintiff that such the words were false, used with actual malice ; were false, and were used without any reasonable or probable cause.~~

Drafting Note: No change in the law.

Article 2.

Bar Organization and Government.

~~§ 54.1-3909. § 54-48. Rules and regulations defining practice of law and prescribing procedure procedures for practice by law students, codes of ethics and disciplinary procedure.— The Supreme Court may ; from time to time, prescribe, adopt, promulgate and amend rules and regulations:~~

~~(a) Defining the practice of law.~~

~~(a1) Prescribing procedure procedures for the limited practice of law by third-year law students.~~

~~(b) Prescribing a code of ethics governing the professional conduct of attorneys -at-law including the practice of law or patent law through professional law corporations ; professional associations and partnerships, and a code of judicial ethics.~~

~~(c) Prescribing procedure procedures for disciplining, suspending, and disbaring attorneys -at-law .~~

Drafting Note: No change in the law.

~~§ 54.1-3910. § 54-49. Organization and government of Virginia State Bar.— The Supreme Court may ; from time to time, prescribe, adopt, promulgate and amend rules and regulations organizing and governing the association known as the Virginia State Bar ; composed of the attorneys-at-law of this State, to . The Virginia State Bar shall act as an administrative agency of the Court for the purpose of investigating and reporting the violation violations of such rules and regulations as are adopted by the Court under this article for such proceedings as may be necessary, and requiring all persons practicing law in this State to be members thereof in good standing . All persons engaged in the practice of law in the Commonwealth shall be active members in good standing of the Virginia State Bar.~~

Drafting Note: It was specified that persons who practice law must be active members of the Virginia State Bar.

~~§ 54.1-3911. § 54-49.1. Transmission of certain information to House and Senate Committees for Courts of Justice.— The Virginia State Bar is authorized to transmit to the House and Senate Committees for Courts of Justice, upon request of the chairman of either Committee, any evidence that it has in its possession with reference to any pending disciplinary proceeding~~

involving a licensed attorney whose name has been placed before the Committee for consideration for election as a judge of a court of this Commonwealth and the record of any previous disciplinary action taken against said *the* attorney.

Drafting Note: No change in the law.

§ 54.1-3912. § 54-50. Fees.— The Supreme Court may ; from time to time, prescribe, adopt, promulgate and amend rules and regulations fixing a schedule of fees to be paid by members of the Virginia State Bar for the purpose of administering this article, and providing for the collection and disbursement of such fees; but the annual fees to be paid by any attorney ~~at-law~~ shall not exceed the sum of \$200.

Drafting Note: No change in the law.

§ 54.1-3913. § 54-52. State Bar Fund; receipts; disbursements.— The State Bar Fund is continued as a special fund in the state treasury. All fees collected from the members of the Virginia State Bar as provided in § 54-50 § 54.1-3912 shall be paid into the state treasury immediately upon collection and credited to the State Bar Fund. All moneys so paid into the ~~fund~~ Fund are hereby appropriated to the Virginia State Bar for the purpose of administering the provisions of this article. All disbursements from the ~~fund~~ Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by ~~such an authorized officer or officers~~ of the Virginia State Bar as may be authorized, by or in accordance with rules and regulations ~~prescribed, adopted and~~ promulgated by the Supreme Court ; so to do .

Drafting Note: No change in the law.

§ 54.1-3914. § 54-50.1. Forfeiture of license for failing to pay fees; restoration of license.— Any attorney ~~at-law~~ licensed to practice in this Commonwealth who fails for two successive years to pay the annual fees provided for by § 54-50 § 54.1-3912 , shall thereby forfeit his license to practice law in this Commonwealth.

The secretary *On or before July 31 of each year, the Executive Director* of the Virginia State Bar shall ; ~~on or before July 31 of each year,~~ notify every attorney whose fees for the two preceding years have not been paid. The notice shall be deemed to have been given if ~~such notice~~ is deposited by registered or certified mail addressed to such attorney at his address as shown on ~~such the secretary's~~ *Executive Director's* official records. ~~In the event that~~ *If* payment thereof is not received by the ~~secretary~~ *Executive Director* within six months from the date of such notice, he shall remove the name of ~~such the~~ attorney from his list of persons qualified to practice law in Virginia, and shall notify the clerk of the Supreme Court of Virginia that the name of ~~such the~~ attorney has been removed. The name of any attorney so removed shall ~~thereafter~~ be restored only upon application of such person to the ~~secretary~~ *Executive Director* accompanied by a sum equal to the aggregate of all fees which are due, plus a penalty ~~in the amount~~ of \$100. Upon receipt of the fees and penalty, the ~~secretary~~ *Executive Director* shall ~~forthwith~~ restore the name of such person to his list of persons qualified to practice law in Virginia and shall ~~forthwith~~ notify the clerk of the Supreme Court of Virginia that such name has been restored.

Drafting Note: No change in the law. The term “secretary” was changed to “Executive Director” because the Executive Director is the secretary.

§ 54.1-3915. § 54-51. Restrictions as to rules and regulations.— Notwithstanding the foregoing provisions of this article, the Supreme Court shall not ~~adopt or~~ promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys ~~at-law~~, which shall be ~~are~~ inconsistent with any statute; nor shall it ~~adopt or~~ promulgate any rule or regulation or method of procedure which ~~shall eliminate~~ *eliminates* the jurisdiction of the ~~Courts~~ *courts* to deal with the discipline of attorneys ~~at-law~~ as provided by law; and ~~in~~ . In no case shall an attorney ; who demands to be tried by a court of competent jurisdiction for the violation of any rule or regulation adopted under this article be tried in any other manner.

Drafting Note: No change in the law.

§ 54.1-3916. § 54-52.1. Legal aid societies.— (1) A. The Virginia State Bar through its governing body is authorized to promulgate rules and regulations governing the function and operation of legal aid societies so as to further the objective of providing legal assistance to ~~those persons~~ requiring such assistance but unable to pay therefor ~~for it~~ . ~~Such rules and regulations shall be designed to further the public interest and prevent violations of law and of the canons of legal ethics.~~

(2) B. The rules and regulations adopted under subsection (1) A may be enforced by the Virginia State Bar, or by the Attorney General if so authorized by the Virginia State Bar.

(3) All legal aid societies in this State duly organized and operating on September 1, 1956, shall be deemed approved legal aid societies until January 1, 1957. Thereafter such legal aid

societies and all other legal aid societies shall comply with the rules and regulations adopted under subsection (1).

~~(3a) C. It shall be a Class 1 misdemeanor for any person, firm, corporation ; association or other organization of any nature to render legal services as a legal aid society, or for any attorney -at-law to render legal services at the instance or request of any such person, firm, corporation ; association or organization of any nature, unless such the person, firm, corporation ; association or organization shall first comply complies with the rules and regulations adopted under subsection (1) A hereof. Violations shall be punishable by imprisonment in jail not to exceed 12 months or by a fine of not to exceed \$1,000 dollars or by both such imprisonment and fine. In addition to such penalties the criminal penalty , an injunction shall lie to prevent any violation of any provision of this section or rule or regulation adopted hereunder. Any attorney -at-law who renders legal services at the instance or request of any person, firm, corporation, association or organization of any nature which purports to operate or does operate as a legal aid society without complying with the provisions of this section or rules and regulations adopted hereunder, shall, in addition to any other penalties, be subject to disbarment upon conviction. The penalties provided by this section shall be in addition and supplemental to any other penalties provided for any offense for which a person may be prosecuted, convicted or enjoined under this section.~~

Drafting Note: Subsection (3) was deleted because all legal aid societies should have come into compliance with this section on January 1, 1957. It was specified that a violation of this section is a Class 1 misdemeanor, since the penalty corresponded with the punishment for a Class 1 misdemeanor. The last sentence was stricken because it is surplusage.

~~§ 54.1-3917. § 54-52.2. Master retirement program.— The Virginia State Bar through its governing body is authorized to approve and be a party to a master retirement program for the benefit of the members of the Virginia State Bar, their employees and families, including the power to execute, amend and revoke a master plan and trust agreement and to pay from the State Bar Fund in the manner provided in § 54-52 § 54.1-3913 the printing and administrative costs incurred in the promulgation and explanation of such program to the members of the Virginia State Bar. Any such program entered into or expenditure made before June 28, 1968 , is hereby validated.~~

Drafting Note: No change in the law.

~~§ 54.1-3918. § 54-52.2:1. Availability of Virginia State Bar membership list.— Copies When requested, copies of the Virginia State Bar membership address list shall be made available to Virginia professional legal organizations which operate not for profit and which regularly conduct continuing legal education programs in the Commonwealth when requested . If specified by the requestor, the list shall be made available in computer sorted zip code sequence in a mailing label format suitable for bulk mailing. Lists shall be provided by the Virginia State Bar on a cost recovery basis.~~

Each request for the mailing list shall be made in writing by requesting organizations to the Executive Director of the Virginia State Bar. Each request shall state the date the list is needed by the requestor and each request shall be postmarked no less than thirty days prior to such date. The cost of mailing or shipping shall be borne by the requestor.

Drafting Note: No change in the law.

~~§ 54-52.3. Circuit directors of attorneys appointed to defend indigent persons under §§ 19.1-241.1 to 19.1-241.6. (a) There may be established in any corporation or circuit court having criminal jurisdiction in this State, the office of circuit director of attorneys appointed, under §§ 19.1-241.1 through 19.1-241.6, to defend indigent persons charged with certain crimes. Such director shall be an attorney-at-law and shall be appointed by the judge of such court, or if there be more than one judge, by the senior judge thereof for a period of three years, shall receive a per diem of \$25 for each day spent in the discharge of his duties but not more than \$600 in any one year, and be reimbursed for expenses incurred in the discharge of his duties. The per diem and expenses of such office shall be paid out of the State criminal fund.~~

~~(b) Such director shall:~~

~~Provide each court of record and not of record, having jurisdiction in criminal cases, with a list of names and addresses of attorneys in his jurisdiction competent and willing to be appointed to defend indigent persons;~~

~~Confer with the judges of such courts in his jurisdiction concerning the appointment of counsel to defend indigent persons and the equitable apportionment of assignments among counsel appointed to defend indigent persons charged with criminal offenses; and~~

Perform such related duties as the judge may direct.

(e) Each director shall make an annual report to the court by which he is appointed and shall maintain such records as the court may direct.

Drafting Note: This section is being repealed because there do not appear to be any existing circuit directors of attorneys.

Article 3.

Board of Bar Examiners.

§ 54.1-3919. ~~54-53.~~ Composition of Board ; quorum .—The State Board of Bar Examiners shall be responsible for the examination of applicants for admission to the bar ; ~~in this chapter sometimes called "the Board,"~~ and shall be composed of five competent lawyers resident in this State attorneys who are residents of the Commonwealth. Three members of the Board shall constitute a quorum for holding examinations or the transaction of other business. The word "Board" when used in this chapter shall mean the Board of Bar Examiners.

Drafting Note: The word "State" was dropped from the name of the Board to make its name conform. Current section 54-55, regarding quorums, was added to this section.

§ 54.1-3920. § 54-54. Appointment and terms of members.— The members of the Board shall be appointed by the Supreme Court for a term of five years by the Supreme Court of Appeals, and shall consist of the present Board until their respective terms expire. As such terms expire or vacancies otherwise occur, they -year terms. Vacancies shall be filled by the Court for the full term of five years.

Drafting Note: Obsolete language was eliminated. No change in the law.

§ 54-55. Quorum. Three members of the Board shall constitute a quorum for holding examinations or the transaction of other business.

Drafting Note: This section was added to § 54.1-3919.

§ 54.1-3921. § 54-56. Board to elect one of its members president; appointment of secretary and treasurer.— The State Board of Bar Examiners shall elect one of its members to serve as its president, and may appoint a qualified member of the Virginia State Bar to act as secretary and treasurer of the Board.

Drafting Note: No change in the law.

§ 54.1-3922. § 54-57.1. Powers, rules and regulations.—The Board shall do, or cause to be done, all things it considers necessary, convenient or expedient in connection with the preparation, conduct and grading of its examinations, in determining the qualifications of applicants, and in determining requirements for the taking and passing of examinations. The Board may make, alter and amend promulgate rules and regulations to aid in the exercise of its authority and in the proper discharge of its duties.

Drafting Note: No change in the law.

§ 54.1-3923. § 54-58. Compensation of members and secretary and treasurer; expenses of examinations.— The members of the Board shall each receive as compensation \$100 per day for the time spent in the discharge of their duties as members, and shall be entitled to reimbursement for such of their actual expenses as are necessary and ordinarily incident to travel as members of the Board to be computed in accordance with Article 1 (§ 14.1-1 et seq.) of Chapter 1 of Title 14.1. The compensation of the secretary and treasurer shall be fixed by the Board ; subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1. The per diem and mileage of the members of the Board, the compensation of the secretary and treasurer, and the necessary expenses incurred in conducting the examinations, shall be paid by the secretary and treasurer out of the fund derived from fees paid by applicants . The compensation for services and expenses herein provided for shall not exceed the amount received as fees from applicants, which shall be fixed by the rules and regulations adopted by the Board ; as hereinafter provided, relative to the examinations to be held by the Board .

Drafting Note: The reference to Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, which is the Virginia Personnel Act, was deleted because it does not seem relevant. The provision that expenses shall be paid out of the fund derived from fees paid by applicants was deleted because these expenses are paid out of a general appropriation.

§ 54.1-3924. § 54-59. Fees paid by applicants.— In order to defray the compensation, mileage and expenses above provided for, the Board shall fix by general rule or special order the fees to be paid by each applicant. If any surplus accumulates from such fees, it shall be divided at periods of five years between the law libraries of the Supreme Court of Appeals.

Drafting Note: The provision that surplus fees be given to the law libraries was removed

because the fees go into the general fund.

Article 4.

Examinations and Issuance of Licenses.

§ 54.1-3925. § 54-60. Application and preliminary certificate of character, fitness and age required of applicant.—A person desiring to take an examination under this article shall file with the Board his application therefor in such form as the Board may require not later than the fifteenth day of the second month preceding the month in which the examination will be given. ~~Such person~~ *The applicant* also shall file with the Board satisfactory evidence that he is a person of honest demeanor and good moral character, is over the age of eighteen and possesses the requisite fitness to practice law. If the applicant is a resident of this Commonwealth as of the deadline for filing with the Board his application to take the examination, such evidence shall be in the form of a certificate from the circuit court of the county or city wherein he resides, finding that he is a person of honest demeanor and good moral character, is over the age of eighteen, possesses the requisite fitness to practice law, and was a resident of this Commonwealth as of the deadline for filing with the Board his application to take the examination; or if he is a regularly enrolled student in one of the approved law schools of this Commonwealth, a certificate signed by the dean and any professor of the law school that he is a person of honest demeanor and good moral character, is over the age of eighteen, possesses the requisite fitness to practice law, and was a resident of this Commonwealth as of the deadline for filing with the Board his application to take the examination, and a statement of intention, signed by the applicant that he will complete all degree or certificate requirements by the scheduled date of the examination for which he is applying.

No such certificate shall be made by any such court until the name of the ~~person applying~~ *applicant* has been submitted by the court to three attorneys, practicing before such court, who shall thoroughly investigate the moral character and fitness of the applicant to practice law and report their findings to the court, and the certificate shall show compliance with the above requirements ; ~~but such~~ . *The report shall not be binding on the court.*

~~In any case in which~~ *If* an applicant for a certificate under this section is refused the same by any court, dean or professor from whom ~~such~~ *the* certificate is sought, ~~the such~~ court, dean or professor ; ~~as the case may be,~~ shall notify the secretary of the Board.

If the applicant is not a resident of this Commonwealth as of the deadline for filing with the Board his application to take the examination, such evidence of character, fitness and age shall be in the form of a character report from the National Conference of Bar Examiners, furnishing information sufficient to satisfy the Board that he is a person of honest demeanor and good moral character, is over the age of eighteen and possesses the requisite fitness to practice law.

Drafting Note: No change in the law.

§ 54.1-3926. § 54-62. Preliminary proof of education required of applicant.— In addition to the certificate required by § 54-60 § 54.1-3925 , ~~every applicant~~ before taking any examination under this article *the applicant* shall furnish to the Board satisfactory evidence that ~~such applicant~~ *he* has:

(1) ~~1.~~ *Completed all degree or certificate requirements from a law school approved by the American Bar Association ; or the Board ; ; or ;*

(2) ~~(i) Completed at least a three-year academic course of an~~ *2. Received a bachelor's degree from a four-year accredited college or university and (ii) studied law for at least three years, in the office of an attorney practicing in this State Commonwealth , whose full time is devoted to the practice of law, or studied law for at least three years partly in a law school approved by the American Bar Association or the Board and partly in said the practicing attorney's office. The attorney in whose office the applicant intends to study shall be approved by the Board ; which shall prescribe reasonable conditinos as to such the course of study.*

Drafting Note: At the request of the Board of Bar Examiners, the requirement that an applicant who reads law complete at least a three-year academic course at an accredited college was changed to require that the applicant have received a bachelor's degree from a four-year college.

§ 54-62.2. Effective date of amendments to §§ 54-60, 54-62 and 54-62.2 and repeal of § 54-62.1. ~~The provisions of §§ 54-60, 54-62, and this section, as hereby amended, and the repeal of § 54-62.1 shall be in effect on and after July 1, 1982.~~

Drafting Note: This section is being repealed because it is no longer necessary to specify the effective date of these sections.

§ 54.1-3927. § 54-63. Time and place of examination.— ~~Such~~ *The Board shall hold at least two examinations each year, at such times as it may prescribe by general rule or special order ; but if . If only two of such examinations are held in any one year, they shall not be less than four months apart. One of such examinations examination shall be held in the City of Richmond, and one in the City of Roanoke each year, unless for good cause it be is necessary to hold it elsewhere.*

Drafting Note: No change in the law.

§ 54.1-3928. § 54-64. Issuance of license; list of licensees certified to Supreme Court of Appeals.— ~~The Board shall issue a license to practice law in this State Commonwealth to every applicant who shall have successfully passed passes the examination on all the subjects required and shall have complied complies with the requirements of this chapter and the rules of the Board ; which . The license shall be signed by at least three members of the Board. The Board shall forthwith certify to the Supreme Court of Appeals a list of those persons whom it has so licensed, which list shall be spread upon the records of the Court.~~

Drafting Note: No change in the law.

§ 54.1-3929. § 54-65. Preservation of examination papers.— ~~The essay portion of the examination papers shall be kept on file in the office of the secretary and treasurer at in Richmond for one year after each the examination, total or partial, after which they it may be destroyed.~~

Drafting Note: No change in the law.

§ 54.1-3930. § 54-66. Reexaminations.— ~~Any applicant failing to pass who fails an examination given after July 15, 1960, may ; after such failure, be reexamined not exceeding more than four additional times upon showing to the Board that he has diligently pursued the study of law since the former examination and that he remains otherwise qualified under the provisions of this article. Provided, however, that However, the Board may allow an applicant ; who has taken the examination five times ; to take additional examinations when, in the discretion of the Board, such the applicant has shown mitigating circumstances which constitute good and sufficient cause for the applicant's failure to pass failing the prior examination.~~

Drafting Note: No change in the law.

§ 54.1-3931. § 54-67. Granting licenses certificates without examination ; law professors.— ~~The Supreme Court of Appeals shall have discretion to grant a certificate without examination to any lawyer attorney who has practiced been admitted to practice law before the court of last resort of any state or territory of the United States or the District of Columbia for three at least five years ; or to any professor in any law school in this State who has taught in such school for a period of three years or more, which . The certificate shall entitle the holder, after paying his license tax, to practice in the courts of this State Commonwealth .~~

~~The Supreme Court of Appeals shall also have discretion to grant a certificate without examination to any person connected with any foreign embassy or legation to appear in the courts of this Commonwealth in all matters connected with his official duties , provided such that the person has been admitted to practice in the court of last resort of the jurisdiction of the embassy or legation to which he is attached or such person he has received a degree from a law school approved by the American Bar Association.~~

~~The Supreme Court shall have the authority to promulgate rules and regulations allowing professors in law schools located in the Commonwealth, which are accredited by the American Bar Association, to become members of the Virginia State Bar, limited to associate membership.~~

~~All other persons shall stand take the examinations and comply with the applicable provisions of the other sections of this chapter applicable thereto .~~

~~Drafting Note: It was provided that an applicant for reciprocity must have been admitted to practice in another state for five years instead of three, so that the requirement would conform with Supreme Court Rule 1A:1. The Supreme Court was given the authority to promulgate regulations regarding the admittance to the Virginia State Bar of law professors.~~

Article 5.

Fees.

§ 54-69. Amount of fee.— ~~An attorney shall be entitled, as a fee, to the amount which the clerk is authorized to tax in the bill of costs, in any suit, or for any service as such attorney. But any contract made with an attorney for higher compensation shall be valid and he may recover such sum as he contracts for with the party for whom the service is rendered; and, if there be no such contract, he may recover from such party what his services are reasonably~~

worth.

Drafting Note: This section is being repealed because it is obsolete.

~~§ 54.1-3932. § 54-70. Lien for fees.— Any person having or claiming a right of action sounding in tort, or for liquidated or unliquidated damages on contract, may contract with any attorney at law to prosecute the same, and such the attorney shall have a lien upon such the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. And when When any such contract shall be is made, and written notice of the claim of such lien shall be is given to the opposite party, his attorney or agent, any settlement or adjustment of such the cause of action shall be void against the lien so created, except as proof of liability on such cause of action. Nothing in this section shall affect the existing law in respect to champertous contracts.~~

Drafting Note: No change in the law.

~~§ 54.1-3933. § 54-71. Decreeing fee out of funds under control of court.— No court shall make any decree or order for the allowance of any fee or compensation to counsel to be paid out of money or property under the control of the court, unless the claim therefor be stated is in the bill, petition, or other proceeding, of which the parties interested shall have due notice, or unless such the parties be are notified in writing that application will be made to the court for such decree or order.~~

Drafting Note: No change in the law.

Article 6.

Revocation or Suspension of Licenses;

Disbarment Proceedings.

~~§ 54.1-3934. § 54-72. Revocation of license by Board.— The Board of Bar Examiners may, for good cause, revoke any license issued by it at any time before there has been a qualification under it in any of the courts of this Commonwealth ; but not thereafter .~~

Drafting Note: The words "but not thereafter" were removed.

~~§ 54-73. Revocation or suspension of license by court.— Any court before which an attorney has qualified, on proof being made that he has been convicted of a felony or of any malpractice, or of any corrupt unprofessional conduct, shall revoke his license to practice therein or suspend the same for such time as the court may prescribe .~~

Drafting Note: This section is being repealed because it is no longer used. Virtually all revocation proceedings take place under current § 54-74 (proposed § 54.1-3935).

~~§ 54.1-3935. § 54-74. Procedure for suspension or revocation of license.— (1) Issuance of rule. - A. If the Supreme Court or , the Court of Appeals, or any circuit court of this Commonwealth ; observes, or if a complaint, verified by affidavit ; is made by any person to such court , of any malpractice or of any unlawful, dishonest, unworthy, corrupt or unprofessional conduct on the part of any attorney, or that any person practicing law is not duly licensed to practice in this Commonwealth, such that any attorney has been convicted of a misdemeanor involving moral turpitude or a felony or has violated the Virginia Code of Professional Responsibility, the court shall, if it deems the case a proper one for such action, may issue a rule against such attorney or other person to show cause why his license to practice law shall not be revoked or suspended . If the complaint, verified by affidavit, is made by a District Committee district committee of the Virginia State Bar, such the court shall issue a rule against such the attorney to show cause why his license to practice law shall not be revoked or suspended .~~

~~(2) Judges hearing case. - B. At the time such the rule is issued the court issuing the same it shall certify the fact of such issuance and the time and place of the hearing thereon, to the Chief Justice of the Supreme Court, who shall designate three circuit court judges of circuit courts of any circuit circuits other than the circuit in which the case is pending to hear and decide the case.~~

~~(3) [Repealed.]~~

~~(3a) Prosecution. - C. Bar Counsel of the Virginia State Bar shall appear at the hearing and prosecute the case. Special counsel may be appointed to prosecute the case pursuant to § 2.1-122 of the Code of Virginia .~~

~~(4) Action of court. - D. Upon the hearing, if the defendant is found guilty by the court, his license to practice law in this Commonwealth shall be revoked ; or suspended for such time as the court may prescribe. However, the court, in lieu of revocation or suspension, the court may ;~~

in its discretion, reprimand such attorney.

(5) Appeal. - E. The complainant person or persons making the complaint or the defendant, may, as of right, appeal from the judgment of the court to the Supreme Court, by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law. In all such cases where a defendant's license to practice law has been revoked by the judgment of the court, his privilege to practice law shall be suspended pending appeal.

(6) "Any malpractice, or any unlawful, dishonest, unworthy, corrupt or unprofessional conduct," as used in this section, shall be construed to include (i) the improper solicitation of any legal or professional business or employment, either directly or indirectly; (ii) the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 (§ 54-78 et seq.) of this chapter; or (iii) the failure, without sufficient cause, within a reasonable time after demand, of any attorney-at-law to pay over and deliver to the person entitled thereto any money, security or other property which has come into his hands as such attorney. However, nothing contained in this article shall be construed to prohibit in any way any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.

(7) Representation by counsel. - F. In any proceedings proceeding to revoke or suspend the license of an attorney under this or the preceding section (§ 54-73), the defendant shall be entitled to representation by counsel.

G. Nothing in this section shall affect the right of a court to require from an attorney security for his good behavior, or to fine him for contempt of court.

Drafting Note: In consultation with the Virginia State Bar, conduct serving as a basis for a revocation proceeding was changed from "any malpractice or any unlawful, dishonest, unworthy, corrupt or unprofessional conduct" to "conviction of a misdemeanor involving moral turpitude or a felony or violation of the Virginia Code of Professional Responsibility." Language regarding unlicensed persons was removed since it is not possible to revoke the license of an unlicensed person. The rule issued by the court states that the attorney may show cause why his license should not be revoked and does not mention suspension and the statute was changed to reflect this.

§ 54.1-3936. § 54-74.01. Proceedings pending disciplinary action.— A. If Bar Counsel or the chairman of a district committee of the Virginia State Bar has reasonable cause to believe that an attorney is engaging in any activity which is unlawful or in violation of the Virginia Code of Professional Responsibility and which will result in loss of property of one or more of the attorney's clients or any other person, he may make an ex parte application to the circuit court of the city or county wherein the attorney who is the subject of the complaint resides or is doing business for the issuance of an order authorizing the immediate inspection by representatives of the applicant of any records, documents, and physical or other evidence belonging to the attorney or any professional partnership ; professional association or professional corporation with which he is associated. The court may issue such order without notice to the attorney if the application, on verified affidavit of the applicant and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the attorney's clients or any other person. The papers filed with the court pursuant to this subsection shall be placed under seal.

B. If Bar Counsel or the chairman of a district committee of the Virginia State Bar has reasonable cause to believe that an attorney is engaging in any activity which is unlawful or in violation of the Virginia Code of Professional Responsibility and which will result in loss of property of one or more of the attorney's clients or any other person, he may file a complaint with the circuit court of the county or city wherein the attorney who is the subject of the complaint resides or is doing business. The complaint may seek the following relief: (i) an injunction prohibiting the withdrawal of any of all bank deposits or the disposition of any other assets belonging to or subject to the control of the attorney who is the subject of the complaint or any professional partnership ; professional association or any professional partnership, professional association or professional corporation with which he is associated; and (ii) the appointment of a receiver for all or part of the funds or property belonging to or subject to the control of the attorney who is the subject of the complaint or any professional partnership or professional corporation with which he is associated. The attorney who is the subject of the complaint shall be given notice of the time and place of the hearing on the complaint and an opportunity to offer evidence. The papers filed with the court under this subsection shall be placed under seal until such time as the court acts. The court may issue an injunction, appoint a receiver or provide such other relief as the court may consider proper if, after a hearing, the

court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the attorney's clients or any other person.

C. In any proceeding under subsection B of this section, any professional partnership ; ~~professional association~~ or professional corporation with which the attorney who is the subject of the complaint is associated and any other person indebted to or having in his possession property, real or personal, belonging to or subject to the control of such attorney and which property is sought to be protected, shall be served with a copy of the complaint and notice of the time and place of the hearing and shall be afforded an opportunity to respond and offer evidence.

D. The court, on motion filed by any party, may transfer a proceeding under this section to any court in which a proceeding is pending pursuant to ~~§ 54-74 or § 54-74.1~~ § 54.1-3935 or § 54.1-3937 for the ~~suspension or~~ revocation of the license of the attorney who is the subject of an order issued pursuant to this section.

Drafting Note: No change in the law.

~~§ 54.1-3937. § 54-74.1. Procedure for suspension or~~ revocation of certificate of registration of professional law corporations ~~and associations~~ .- ~~(1) Issuance of rule.~~ - A. If the Supreme Court, the Court of Appeals or any circuit court of this Commonwealth ~~shall observe~~ *observes* , or if a complaint , verified by affidavit , ~~shall be~~ *is* made by any person to a circuit court having jurisdiction where the alleged violation occurred, that any ~~professional law corporation or association rendering services of attorneys -at-law~~ has willfully failed to comply with the applicable ethical standards of the Virginia Code of Professional Responsibility or the applicable ~~Virginia~~ statutes governing professional corporations ~~and associations~~ , such court ~~shall, if it deems the case a proper one for such action,~~ may issue a rule against such law corporation ~~or association~~ to show cause why its certificate of registration should not be ~~suspended or~~ revoked ~~or other disciplinary action should not be taken~~ . If the complaint, verified by affidavit, ~~be~~ *is* made by the standing Committee on Law Corporations of the Virginia State Bar, ~~such the~~ court shall issue a rule against ~~such the~~ law corporation ~~or association~~ to show cause why its certificate of registration should not be ~~suspended or~~ revoked ~~or other disciplinary action should not be taken; however~~ . *However* , such rule shall not issue if the violation is ~~(a)~~ *(i)* that of one or several persons only and the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individuals involved, or ~~(b)~~ *(ii)* that the law corporation ~~or association~~ does not have a ~~duly issued and~~ valid certificate of registration.

~~(2) Judges hearing case.-~~ ~~(a)~~ *B.* If ~~such the~~ rule is issued by the Supreme Court, it ~~shall make~~ the rule ~~shall be~~ returnable to the Circuit Court of the City of Richmond. At the time the rule is issued, the Chief Justice of the Supreme Court shall designate three circuit court judges to hear and decide the case.

~~(b)~~ If ~~such the~~ rule is issued by a circuit court or the Court of Appeals, it shall thereupon certify the fact of such issuance to the Chief Justice of the Supreme Court. The Chief Justice shall designate three circuit court judges of circuits other than the circuit in which the case is pending to hear and decide the case.

~~(3) Duties of Commonwealth's attorney.~~ - It shall be the duty of the three-judge court to select an attorney for the Commonwealth of any county or city other than the county or city in which such case is pending to appear at the hearing and present such evidence as is available. *C. Bar Counsel of the Virginia State Bar shall prosecute the case. Special counsel may be appointed to prosecute the case pursuant to § 2.1-122.*

~~(4) Action of court.~~ - *D.* If, after notice and opportunity to be heard, the law corporation ~~or association~~ is found guilty by the court of a willful failure to comply with the applicable ethical standards in the Virginia Code of Professional Responsibility or the applicable statutes governing professional corporations ~~and associations~~ , the court may ; ~~in its discretion,~~ ~~(a)~~ *(i)* reprimand the professional corporation ~~or association~~ , or ~~(b)~~ *(ii)* put it on terms to comply with the applicable law or ethical standards within a reasonable time upon condition that failure to ~~so~~ comply shall constitute grounds for suspension or revocation of the certificate of registration or for other disciplinary action, or ~~(c)~~ *(iii)* suspend or revoke the certificate of registration where the violation is of a severe nature and has continued for an extended period of time. If the violation is such that it can be corrected upon notice to the law corporation ~~or association~~ and it is corrected to the satisfaction of the court, or if the violation is that of one or several persons only, the certificate of registration shall not be suspended or revoked if the interest of justice and the protection of the public can be fairly served by applicable disciplinary proceedings against the individuals involved.

~~(5) Appeal. - E. The law corporation or association may, as of right, appeal from the judgment of the court to the Supreme Court by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law. In all such cases where a professional corporation's or association's certificate of registration has been revoked or suspended by the judgment of the court, such revocation or suspension shall be suspended pending appeal.~~

~~(6) Representation by counsel. - F. In any proceedings under this section the defendant shall be entitled to a full and fair hearing and representation by counsel.~~

Drafting Note: It was provided that Bar Counsel, rather than a Commonwealth's attorney, shall prosecute the case since this is the actual procedure.

~~§ 54-75. Security for good behavior, etc. Nothing in the preceding section (§ 54-74) shall affect the right of any court to require from an attorney therein security for his good behavior, or to fine him for a contempt of the court.~~

Drafting Note: This section was included as subsection G of § 54.1-3935 (current § 54-74).

~~§ 54.1-3938. § 54-76. Service of process in disbarment or suspension license revocation proceedings.— If personal service of process cannot be had upon the defendant in license revocation proceedings, proceedings may be had by order of publication on proper affidavit.~~

Drafting Note: No change in the law.

~~§ 54-77. Notice of revocation or suspension.— Whenever the license to practice law of any attorney is revoked or suspended, and whenever any attorney is convicted of any felony, the clerk of the court in which the proceeding to revoke or suspend such license is had, or in which any attorney is so convicted, shall transmit forthwith a certified copy of the order of revocation, suspension or conviction, as the case may be, to the Clerk of the Supreme Court of Virginia, and to the Executive Director of the Virginia State Bar.~~

Drafting Note: This section is being repealed because it is not used.

Article 7.

Solicitation of Professional Employment.

~~§ 54.1-3939. § 54-78. Definitions.— As used in this article:~~

~~(a) A "runner" or "capper" is any person acting within this State as an agent for an attorney-at-law in the solicitation of professional employment for such attorney at law.~~

~~(b) An "agent" is one "Agent" means any person who acts for another with or without compensation at the request, or with the knowledge and acquiescence, of the other in dealing with a third person or persons.~~

~~"Runner" or "capper" means any person acting within the Commonwealth as an agent for an attorney in the solicitation of professional employment for the attorney.~~

~~(c) "Solicitation of professional employment" is the means obtaining or attempting to obtain, for an attorney at law representation of some other person to render legal services for such other person and whereby such attorney-at-law will or may receive compensation; provided that neither conduct limited to mere statements of opinion respecting the ability of a lawyer, nor conduct pursuant to a uniform legal aid or lawyer referral plan approved by the Virginia State Bar, shall be deemed the solicitation of professional employment, the opportunity to represent or render other legal services to another person, for which services the attorney will or may receive compensation. Solicitation of professional employment shall not include conduct (i) limited to mere statements of opinion respecting the ability of an attorney, (ii) pursuant to a uniform legal aid or lawyer referral plan approved by the Virginia State Bar or (iii) pursuant to any qualified legal services plan or contract of legal services insurance.~~

~~(d) A "person" is any person, firm, corporation, partnership or association.~~

Drafting Note: The chapter on attorneys currently contains an article entitled "Runners and Cappers" and another article entitled "Solicitation of Professional Employment." These have been combined into one article entitled "Solicitation of Professional Employment."

~~§ 54.1-3940. § 54-83.1:2. Solicitation prohibited.— It shall be unlawful for an attorney at-law having no legal duty to do so to solicit professional employment either directly or through an agent; provided, that such solicitation shall not be unlawful when made of one related to the attorney at law by blood or marriage for the purpose of aiding the one so related in a matter in which he or she has a direct personal interest, or when conducted pursuant to a uniform legal~~

aid or lawyer referral plan approved by the Virginia State Bar in a manner that violates the Virginia Code of Professional Responsibility .

Drafting Note: The second clause of this section was included in § 54.1-3939. This section was revised to remove the obsolete prohibition on solicitation by an attorney and to provide that solicitation shall not violate the Virginia Code of Professional Responsibility.

§ 54.1-3941. § 54-79. Unlawful to act as runners or cappers.— It shall be unlawful for any person to act singly or in concert with others as a runner or capper for an attorney ~~at-law~~ .

Drafting Note: No change in the law.

§ 54-83. Validity of contract. Any contract for professional employment secured by an attorney ~~at-law~~ through the service of a runner or capper shall be void and unenforceable.

Drafting Note: This section is being repealed because § 54.1-3942 taken from the article on solicitation of employment provides that any contract for professional employment secured by an attorney in violation of this article shall be void and unenforceable.

§ 54.1-3942. § 54-83.1:4. Validity of contract.— Any contract for professional employment secured by an attorney ~~at-law~~ in violation of this article shall be void and unenforceable.

Drafting Note: This section now applies to contracts secured by runners and cappers as well as solicitation of professional employment through an agent.

§ 54.1-3943. § 54-83.1. Injunction against running, capping and soliciting and maintenance .— The Commonwealth's attorney, or any person, firm or corporation against whom any ~~claim for damage to property or damages for personal injuries or for death resulting therefrom, cause of action~~ is or has been asserted, may maintain a suit ~~in equity for an injunction~~ against any person who has solicited employment for himself or attorney who has induced another to solicit or encourage his employment, or against any person, firm, partnership or ~~association~~ corporation which has acted for another in the capacity of a runner or capper or which has been stirring up litigation in such a way as to constitute maintenance , or against any person engaged by an attorney to solicit employment for the attorney, whether such or not the solicitation was successful or not, to . The court may enjoin and permanently restrain such person, his agents, representatives and principals from soliciting any such claims against any person, firm or corporation subsequent to the date of the injunction.

Drafting Note: This section was revised to reflect court cases which allow an attorney to solicit for himself but do not allow him to employ others to solicit for him.

§ 54-83.1:1. Definitions. As used in this article:

(1) An "agent" and a "person" shall have the same meaning as defined in Article 7 (§ 54-78 et. seq.) of this chapter.

(2) To "solicit professional employment" is to obtain or attempt to obtain for an attorney ~~at-law~~ representation of some other person to render legal services for such person for which the attorney ~~at-law~~ will or may receive compensation.

Drafting Note: This definitional section is being repealed because the definitional sections for the two articles were combined into one.

§ 54-83.1:3. Penalty. Any attorney ~~at-law~~ violating the provisions of this article shall be guilty of a misdemeanor and shall be punished as provided by § 18-1-9.

Drafting Note: This section is being repealed because § 54.1-3944 provides that any person who violates the provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 54.1-3944. § 54-82. Penalty for violation.— Any person violating the provisions of this article shall be guilty of a Class 1 misdemeanor ; and shall be punished as provided by § 18-1-9 . In addition to such punishment , any person employed as an officer, director, trustee, clerk, servant or agent of this State Commonwealth or of any county, city or other municipal corporation or political subdivision thereof of the Commonwealth who shall be found guilty of violating the provisions of this article shall forfeit the right of his office and his employment.

Drafting Note: It was provided that the penalty for violating this article is a Class 1 misdemeanor.

CHAPTER 40.

PAWNBROKERS.

§ 54.1-4000. § 54-840. Definition of pawnbroker. — Any "Pawnbroker" means any person who shall in any manner lend or advance lends or advances money or other things for profit on the pledge and possession of personal property, or other valuable things, other than securities or

written or printed evidences of indebtedness, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price ; ~~shall be held to be a pawnbroker .~~

Drafting Note: No change in the law.

~~§ 54.1-4001. § 54-841.~~ License authorized by court; *building designated in license*; penalty.— The circuit court of any county or city may authorize any county, city or town to issue to any ~~citizen of the United States individual~~ who ~~shall produce~~ *produces* satisfactory evidence of his good character, a license to ~~exercise or carry on~~ *engage in* the business of a pawnbroker in his ~~that~~ county, city or town. No such license shall be issued by any ~~such~~ county, city or town except with such authority. Prior to the issuance of the license, the applicant shall furnish his date of birth and such other information to the licensing authority as may be ~~requested~~ *required* by the governing body. The license shall designate the building in which ~~such person~~ *the licensee* shall carry on such business. No person shall ~~exercise or carry on~~ *engage in* the business of a pawnbroker without being ~~duly licensed under penalty of fifty dollars for each day he shall exercise or carry on such business without such license .~~

~~§ 54-842.~~ *Building designated in license; penalty.* No person shall ~~exercise or carry on~~ *engage in* the business of a pawnbroker in any ~~other building~~ *location* other than the one designated in ~~such~~ *his* license, except ~~by~~ *with* consent of the court which authorized the license ; ~~under penalty of fifty dollars for each day he shall exercise or carry on such business in any other building than the one so designated . Any person who violates the provisions of this section shall be guilty of a Class 4 misdemeanor. Each day's violation shall constitute a separate offense.~~

Drafting Note: The word "building" was changed to location, so that a pawnbroker who operates in an unauthorized location, whether it happens to be in a building or not, will be covered by the law. Current §§ 54-841 and 54-842 were combined into one section. The penalty was changed from \$50 to a Class 4 misdemeanor.

~~§ 54.1-4002. § 54-843.~~ Local limitations as to number of pawnshops.— In addition to all limitations and restrictions and notwithstanding any other relevant provisions of this chapter, the governing body of any county, city or town may limit by resolution or ordinance the number of pawnshops that may be operated at any one time within ~~the~~ *its* territorial limits ~~thereof~~ .

The circuit court of any county or city which has ~~established~~ , by resolution or by ordinance , ~~any such limit as to~~ *limited* the number of pawnshops therein shall have ~~no authority to~~ *not* authorize any license to any pawnbroker after the commissioner of the revenue or other tax assessing officer of the county, city or town over which it has jurisdiction for the issuance of such licenses has filed with the court a statement ~~to the effect that the number of licensed pawnshops within the county, city or town has reached the maximum number of pawnshops authorized to be operated therein according to resolution or ordinance of its governing body , unless the number has been reduced below the maximum so prescribed. Nothing in this section shall be construed as authorizing any county, city or town to deprive any licensee of his license who had a license in force on February 15, 1944.~~

Drafting Note: The last sentence was removed because it is outdated.

~~§ 54.1-4003. § 54-845.~~ Private action on bond.— If any person shall be aggrieved by the ~~misconduct of any such licensed pawnbroker, and shall recover judgment against him therefor, such person may, after the return unsatisfied, either in whole or part, of any execution issued upon such judgment, maintain action in his own name upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed; provided, such court shall, upon application made for the purpose, grant such leave to prosecute. Any person who recovers a judgment against a licensed pawnbroker for the pawnbroker's misconduct may maintain an action in his own name upon the bond of the pawnbroker if the execution issued upon such judgment is wholly or partially unsatisfied.~~

Drafting Note: This section was rewritten but the substance was not changed, except that the provision that the court shall grant to leave to prosecute is omitted.

~~§ 54.1-4004. § 54-846.~~ Memorandum to be given pledgor.— Every pawnbroker shall at the time of each loan deliver to the person pawning or pledging ~~any goods, article or thing~~ *anything* , a memorandum or note, signed by him, containing the information required by ~~§ 54-851 of the Code § 54.1-4009~~ . A one-time two dollar service fee may be charged for any such entry, memorandum or note.

Drafting Note: No change in the law.

~~§ 54.1-4005. § 54-847.~~ Sale of goods pawned.— No pawnbroker shall sell any pawn or pledge until (i) ~~the same shall have remained four months in his or her possession, unless a shorter time period of not less than thirty days is agreed to by consent in writing of the pawner it has been in his possession for four months, unless a shorter period of not less than thirty days is~~

agreed to in writing by the pawner , and (ii) a statement of ownership is obtained from the pawner. All sales of items pursuant to this section shall be made at a public auction and conducted by a duly licensed auctioneer. The governing body of the locality wherein the pawnbroker conducts his business may determine the contents of the statement of ownership.

Drafting Note: No change in the law.

~~§ 54.1-4006. § 54-848.~~ Notice of sale.— Notice of every such sale of a pawn or pledge shall be published for at least five days ~~previous thereto~~ prior to the sale in one or more of the daily newspapers of general circulation ~~printed in such~~ in the county or city in which the pawnbroker does business . ~~Those doing business in any county shall advertise as above in some newspaper published in the county, if there be any, and if no newspaper be published in such county, then in some newspaper published in an adjoining county.~~ Such ~~The~~ notice shall specify the time and place at which such of the sale is to take place , the name of the auctioneer by whom the same is to be conducted , the kinds of articles to be sold and the number of the pawner's ticket.

Drafting Note: The section was rewritten to delete the requirement that the newspaper in which the notice of sale is published be printed in the city or county in which the pawnbroker does business. The provision that the notice be placed in a paper published in an adjoining county if there is no daily newspaper published in the county of the pawnbroker's business was removed. As revised, the section requires that the notice be published in a daily newspaper of general circulation in the county or city in which the pawnbroker does business.

~~§ 54.1-4007. § 54-849.~~ Disposition of surplus.— The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same, and the expenses of the advertisement and sale, shall be paid over by the pawnbroker to the person who would be entitled to redeem the pledge in case no such sale had taken place. ~~After deductions are made for the amount of the loan, interest due on the loan and the expenses of advertising and conducting the sale, the pawnbroker shall pay any money remaining from the proceeds of the sale to the person who would have been entitled to redeem the pledge if the sale had not taken place.~~

Drafting Note: This section was rewritten but there are no substantive changes.

~~§ 54.1-4008. § 54-850.~~ Interest chargeable.— No pawnbroker shall ask, demand or receive a greater rate of interest than ~~10%~~ ten percent per month on a loan of \$25 or less, or ~~7%~~ seven percent per month on a loan of more than \$25 and less than \$100, or ~~5%~~ five percent per month on a loan of \$100 or more, secured by a pledge of tangible personal property. ~~And no~~ No loan shall be divided for the purpose of increasing the percentage to be paid the pawnbroker.

Drafting Note: No change in the law.

~~§ 54.1-4009. § 54-851.~~ Records to be kept; credentials of person pawning goods.— A. Every pawnbroker shall keep at his place of business a ~~book or books, in which shall be written in English, at the time of each loan or transaction in the course of his business, an accurate and legible account record of such each loan or transaction ; setting forth in the course of his business. The account shall be recorded at the time of the loan or transaction and shall include:~~

~~(1)~~ 1. A description and a statement of ownership of the goods, article or thing pawned or pledged or received on account of money loaned thereon;

~~(2)~~ 2. The time of receiving the same;

~~(3)~~ 3. The amount of money loaned thereon at the time of pledging the same;

~~(4)~~ 4. The rate of interest to be paid on such loan;

~~(5)~~ 5. The name and residence of the person pawning or pledging the goods, article or thing, together with a particular description of such person;

~~(6)~~ 6. The terms and conditions of the loan, including the period for which any such loan may be made; and

~~(7)~~ 7. All other facts and circumstances respecting such loan.

B. The Superintendent of State Police shall promulgate regulations specifying the nature of the particular description for the purposes of ~~(5)~~ subdivision 5 above.

The Superintendent of State Police shall promulgate regulations specifying the nature of identifying credentials of the person pawning or pledging the goods. Such credentials shall be examined by the pawnbroker, and an appropriate record retained thereof.

Drafting Note: This section was revised to require a legible record of each transaction rather than an entry written in English in a book.

~~§ 54-852. Records open to inspection.— Such book shall at all reasonable times be opened to inspection of the judges of the criminal courts, the chief of police, and captains and sergeants of police or the sergeant, sheriff or any other officer with police jurisdiction of the city, town or county wherein such business is being conducted.~~

Drafting Note: This section is being repealed because it duplicates proposed § 54.1-4011.

~~§ 54.1-4010. § 54-853. Daily reports.— Every pawnbroker shall prepare a daily report at the end of each day of all goods, articles or things pawned or pledged with him during such that day and file such report not later than by noon of the following day with the sheriff, sergeant, chief of police or other law-enforcement officer of the city, town or county, city or town such where his business is being conducted designated by the local Commonwealth's attorney for the Commonwealth of such city or county to receive it. Such The report shall include the name and residence of the pledgor and a description of the goods, article or thing pledged and shall be in writing and clearly legible to any person inspecting it.~~

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a Class 4 misdemeanor and on conviction shall be punished by a fine of not less than \$10 nor more than \$500 for each offense .

Drafting Note: Violation of this section was made a Class 4 misdemeanor.

~~§ 54.1-4011. § 54-854. Officers may examine records or property.— Every pawnbroker and every person in the employ of such employee of the pawnbroker shall admit to his premises the pawnbroker's place of business at any time any during regular business hours, the chief law-enforcement officer mentioned in this chapter, or his designee, of the jurisdiction where the business is being conducted, or any law-enforcement official of the state or federal government, examine any pledge or pawn, book or other record on the premises; as well as the articles pledged, and to search for and take into possession any article known by him to be missing, or known or believed by him to have been stolen, without the formality of a writ of search warrant, or any other process. Such search or seizure is hereby authorized. and shall permit such officer to examine all records required by this chapter and any article listed in a record which is believed by the officer to be missing or stolen.~~

Drafting Note: The language regarding which law-enforcement officers may inspect was changed to conform with a comparable section in the chapter on Precious Metals Dealers.

~~§ 54.1-4012. § 54-855. Property pawned not to be disfigured, changed or concealed.— No property of any kind received on deposit or pledge by any pawnbroker shall be disfigured or its identity destroyed, or affected in any manner whatsoever so long as it continues in pawn or in the possession of such the pawnbroker, nor shall such any property be in any manner concealed for the space of forty-eight hours after the same shall have been property is received by such the pawnbroker.~~

Drafting Note: No change in the law.

~~§ 54.1-4013. § 54-856. Care of blankets, clothing, etc.—Pawnbrokers shall store, or take care to protect from injury damage during disuse, all blankets, clothing, carpets, furs, rugs, dress goods, cloths, mirrors, oil paintings, glass and chinaware, pianos, organs, curtains, beddings and upholstered furniture pawned or pledged with them. Pawnbrokers shall be allowed to charge two per centum percent per month in addition to the regular charges for the first three months, or part thereof, while such goods shall remain as pledge for money advanced.~~

Drafting Note: No change in the law.

~~§ 54-857. Penalty for violation generally; first and subsequent offenses.— Every person who shall be convicted of violating any of the provisions of this chapter shall, for the first offense, forfeit and pay a penalty, except when a different penalty is provided, not exceeding twenty-five dollars, and for a subsequent offense shall pay such penalty as the court may impose, and shall in the discretion of the court, forfeit his license.~~

Drafting Note: This section is being repealed and the provision that the court may suspend or revoke a license is added to proposed § 54.1-4014.

~~§ 54.1-4014. § 54-858. Penalty for violation by licensed pawnbroker.— Any licensed pawnbroker who shall violate or neglect or refuse to comply with violates any of the provisions of this chapter except when otherwise provided, shall, for every such offense, upon conviction before a court of competent jurisdiction, pay a fine of not more than \$100 shall be guilty of a Class 4 misdemeanor. In addition, the court may revoke or suspend the pawnbroker's license for second and subsequent offenses.~~

Drafting Note: It was specified that the penalty is a Class 4 misdemeanor and the provision

that a license may be suspended for second and subsequent offenses is taken from current § 54-857.

§ 54-859. Liability for acts of agents.— Every pawnbroker shall be liable to all the penalties provided for violation of any of the provisions of this chapter, whether such violations be committed by himself or by his agent, clerk or employee.

Drafting Note: This section is being repealed.

CHAPTER 41.

PRECIOUS METALS DEALERS.

§ 54.1-4100. ~~§ 54-859.15.~~ Definitions. — For the purposes of this chapter ; ~~the following definitions shall apply , unless the context requires a different meaning :~~

1. "Coin" means any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.

2. "Dealer" means any person, firm, partnership, or corporation engaged in the business of (i) purchasing secondhand precious metals or gems; (ii) removing in any manner precious metals or gems from manufactured articles not then owned by ~~such~~ the person, firm, partnership, or corporation; or (iii) buying, acquiring, or selling precious metals or gems removed from ~~such~~ manufactured articles. "Dealer" ~~shall mean~~ includes all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any ~~such~~ purchase for or on behalf of his employer or principal.

~~This~~ The definition of "dealer" shall not be construed so as to include persons engaged in the following:

a. 1. Purchases of precious metals or gems directly from other dealers, manufacturers, or wholesalers for retail or wholesale inventories, provided that the selling dealer has complied with the provisions of this chapter.

b. 2. Purchases of precious metals or gems from a duly qualified fiduciary who is disposing of the assets of ~~the~~ an estate being administered by ~~such~~ the fiduciary in the administration of an estate .

c. 3. Acceptance by a retail merchant of trade-in merchandise previously sold by ~~such~~ the retail merchant to the person presenting that merchandise for trade-in.

d. 4. Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.

e. 5. Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the Commonwealth of Virginia .

f. 6. Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a by-product.

3. "Gems" means any item containing precious or semiprecious stones customarily used in jewelry.

4. "Precious metals" means any item except coins composed in whole or in part of gold, silver, platinum, or platinum alloys.

Drafting Note: No change in the law.

§ 54.1-4101. ~~§ 54-859.16.~~ Records to be kept; copy furnished to local authorities; inspection of records.— A. Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each ~~such~~ purchase shall be retained by the dealer for ~~not less than~~ at least twenty-four months : ~~These records and~~ shall set forth the following:

1. A complete description of all precious metals or gems purchased from each seller. The description shall include all names, initials, serial numbers or other identifying marks or monograms on each item purchased, the true weight or carat of any gem, and the price paid

for each item;

2. The date and time of receiving the items purchased;

3. The name, address, age, sex, race, driver's license number or social security number, and signature of the seller; and

4. A statement of ownership from the seller.

B. The information required by subdivisions 1 through 3 of subsection A of this section shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be mailed or delivered within twenty-four hours of the time of purchase to the chief law-enforcement officer of the locality in which the purchase was made.

C. Every dealer shall admit to his ~~premises~~ *place of business* during regular business hours the ~~local~~ chief law-enforcement officer, or his ~~sworn~~ designee, of the jurisdiction in which the dealer is located, or any law-enforcement ~~official~~ *officer* of the state or federal ~~governments~~ *government*, and shall permit such ~~law-enforcement~~ officer to examine all records required by this chapter; and to ~~examine~~ any article listed in a record which is believed by the officer ~~or official~~ to be missing or stolen.

Drafting Note: No change in the law.

§ 54.1-4102. § ~~54-859.17~~. Credentials and statement of ownership required from seller.— No dealer shall purchase precious metals or gems without first (i) ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one other corroborating means of identification, and (ii) obtaining a statement of ownership from the seller.

The governing body of the locality wherein the dealer conducts his business may determine the contents of the statement of ownership.

Drafting Note: No change in the law.

§ 54.1-4103. § ~~54-859.18~~. Prohibited purchases.— A. No dealer shall purchase precious metals or gems from any seller who is under the age of eighteen.

B. No dealer shall purchase precious metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has written and duly authenticated authorization from the owner permitting and directing such sale.

Drafting Note: No change in the law.

§ 54.1-4104. § ~~54-859.19~~. Dealer to retain purchases.— A. The dealer shall retain all precious metals or gems purchased for a minimum of ten calendar days from the date on which a copy of the bill of sale is received by the chief law-enforcement officer of the locality in which the purchase is made. Until the expiration of this period, the dealer shall not sell, alter, or dispose of a purchased item in whole or in part, or remove it from the county, city, or town in which the purchase was made.

B. If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of ten calendar days after receiving such article and precious metals or gems.

Drafting Note: No change in the law.

§ 54.1-4105. § ~~54-859.20~~. Record of disposition.— Each dealer shall ~~keep and~~ maintain for at least twenty-four months an accurate and legible record of the name and address of the person, firm, or corporation to which he sells any precious metal or gem in its original form after the waiting period required by § ~~54-859.19~~ § 54.1-4104. This record shall also show the name and address of the seller from whom the dealer purchased ~~such~~ *the* item.

Drafting Note: No change in the law.

§ 54.1-4106. § ~~54-859.21~~. Bond or letter of credit required of dealers when permit obtained.— A. Every dealer shall secure a permit as required by § ~~54-859.23~~ § 54.1-4108, and each dealer at the time of obtaining such permit shall enter into a recognizance to the Commonwealth of Virginia secured by a corporate surety authorized to do business in this Commonwealth, in the penal sum of \$10,000, conditioned upon due observance of the terms of this chapter. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the Commonwealth of Virginia a letter of credit in favor of the Commonwealth ~~in the sum of~~ *for* \$10,000.

B. If any county, city, or town has an ordinance ~~in force~~ which regulates the purchase and sale of precious metals and gems pursuant to ~~§ 54-859.26~~ § 54.1-4111 , such bond or letter of credit shall be executed in favor of the local governing body.

C. A single bond upon an employer or principal may be written or a single letter of credit issued to cover all employees and all transactions occurring at a single location.

Drafting Note: No change in the law.

§ 54.1-4107. ~~§ 54-859.22.~~ Private action on bond or letter of credit.— ~~If any~~ Any person shall be aggrieved by the misconduct of any dealer ~~who has~~ which violated the provisions of this chapter ; ~~he~~ may maintain an action for recovery in any court of proper jurisdiction against ~~such~~ the dealer and his surety ; ~~provided that recovery~~ . Recovery against the surety shall be only for that amount of the judgment ; ~~if any~~, which is unsatisfied by the dealer.

Drafting Note: No change in the law.

§ 54.1-4108. ~~§ 54-859.23.~~ Permit required; method of obtaining permit; no convictions of certain crimes; approval of weighing devices; renewal; permanent location required.— A. ~~Effective July 1, 1981, no~~ No person shall engage in the activities of a dealer as defined in § ~~54-859.15~~ 54.1-4100 without first obtaining a permit from the chief law-enforcement officer of each county, city, or town in which he proposes to engage in business.

B. To obtain a permit, the dealer shall file with the proper chief ~~of police~~ law-enforcement officer an application form which ~~shall include~~ includes the dealer's full name, any aliases, address, age, date of birth, sex, and fingerprints; the name, address, and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. Upon filing this application and the payment of a \$200 application fee, the dealer shall be issued a permit by the chief law-enforcement officer or his designee, provided that the applicant has not been convicted of a felony or crime of moral turpitude within ~~7~~ seven years prior to the date of application. The permit shall be denied if the applicant has been denied a permit or has had a permit revoked under any ordinance similar in substance to the provisions of this chapter.

C. Before a permit may be issued, the dealer must have all weighing devices used in his business inspected and approved by local or state weights and measures officials and present written evidence of such approval to the proper chief law-enforcement officer.

D. This permit shall be valid for ~~1~~ one year from the date issued and may be renewed in the same manner as such permit was initially obtained with an annual permit fee of \$200. No permit shall be transferable.

E. If the business of the dealer is not operated without interruption, with Saturdays, Sundays, and recognized holidays excepted, the dealer shall notify the proper chief law-enforcement officer of all closings and reopenings of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified in his application for a permit.

Drafting Note: The effective date of the requirement to obtain a permit was removed.

§ 54.1-4109. ~~§ 54-859.24.~~ Exemptions from chapter.— A. The chief law-enforcement officer of a county, city or town, or his designee, may waive by written notice implementation of any one or more of the provisions of this chapter, except ~~§ 54-859.18~~ § 54.1-4103 , for particular numismatic, gem, or antique exhibitions or craft shows sponsored by nonprofit organizations, provided that the purpose of the exhibitions is nonprofit in nature, notwithstanding the fact that there may be casual purchases and trades made at such exhibitions.

B. Neither the provisions of this chapter nor any local ordinances dealing with the subject matter of this chapter shall apply to the sale or purchase of coins.

C. Neither the provisions of this chapter nor any local ordinance dealing with the subject matter of this chapter shall apply to any bank, branch thereof, trust company or bank holding company, or any wholly owned subsidiary thereof, engaged in buying and selling gold and silver bullion.

Drafting Note: Current §§ 54-859.27 and 54-859.28 were combined with this section so that all exemptions would be in one section.

§ 54.1-4110. ~~§ 54-859.25.~~ Penalties; first and subsequent offenses.— A. Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense he shall be guilty of a Class 1 misdemeanor.

B. Upon the first conviction by ~~any court~~ of a dealer for violation of any provision of this

chapter, the chief law-enforcement officer may revoke ~~his the dealer's~~ permit to engage in business as a dealer under this chapter for a period of one full year from the date the conviction becomes final. Such revocation shall be mandatory upon a second conviction.

Drafting Note: No change in the law.

~~§ 54.1-4111. § 54-859.26.~~ Local ordinances.— Nothing in this chapter shall prevent any county, city, or town in this Commonwealth from enacting an ordinance regulating dealers in precious metals and gems which parallels this chapter, or which imposes terms, conditions, and fees that are stricter, more comprehensive, or larger than ~~the terms, conditions, and fees those~~ imposed by this chapter. In any event, the terms, conditions, and fees imposed by this chapter shall constitute minimum requirements in any local ordinance. Any fee in excess of the one specified in ~~§ 54-859.23~~ § 54.1-4108 shall be reasonably related to the cost of enforcement of such local ordinance.

Drafting Note: No change in the law.

~~§ 54-859.27.~~ Coins exempt. Neither the provisions of this chapter nor of any local ordinance shall apply to the sale or purchase of coins.

Drafting Note: This section is being placed in § 54.1-4109 so that all exemptions will be in one section.

~~§ 54-859.28.~~ Banking institutions exempt. Neither the provisions of this chapter nor of any local ordinance dealing with the subject matter of this chapter shall apply to any bank, branch thereof, trust company or bank holding company, or any wholly owned subsidiary thereof, engaged in the business of buying and selling gold and silver bullion.

Drafting Note: This section is being placed in § 54.1-4109 so that all exemptions will be in one section.

APPENDIX II

Comparative Tables
(General Provisions to Regulatory Boards -- Subtitle I)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 1	Chapters 1 and 1.1
§ 54.1-100	§ 54-1.17
54.1-101	54-1
54.1-102	54-1.1
	54-1.2
54.1-103	Added
	54-1.28
54.1-104	54-1.2:1
54.1-105	Added
54.1-106	54-1.2:2
54.1-107	54-1.18:1
54.1-108	54-1.41
54.1-109	54-1.19
54.1-110	54-1.37
54.1-111	54-1.20
54.1-112	Added
54.1-113	54-1.28:1
54.1-114	54-1.2:3

Comparative Tables
(General Provisions for the Regulatory Boards
Within the Department of Commerce -- Subtitle II)

NEW TITLE 54.1

Chapter 2

§ 54.1-200
54.1-201
54.1-202
54.1-203
54.1-204

OLD TITLE 54

Chapter 1.1

§ 54-1.27
54-1.28
54-1.22
54-1.22:1
54-1.21

Comparative Tables
(Department of Commerce)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 3	Chapter 1.1
§ 54.1-300	§ 54-1.18
54.1-301	54-1.30
54.1-302	54-1.31
54.1-303	54-1.32
54.1-304	54-1.33
54.1-305	54-1.34
54.1-306	54-1.39
54.1-307	54-1.40
54.1-308	54-1.42
54.1-309	54-1.23
	54-1.24
54.1-310	54-1.25
54.1-311	54-1.26

Comparative Tables
(Architects, Engineers, Land Surveyors
and Landscape Architects)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 4	Chapter 3
§ 54.1-400	§ 54-17.1
54.1-401	54-37
54.1-402	54-37.1
54.1-403	54-18.1
	54-19
	54-22
	54-23
54.1-404	54-25
54.1-405	54-26
54.1-406	54-26.1
54.1-407	54-25.1
54.1-408	54-17.1
54.1-409	54-17.1
54.1-410	54-37.2
54.1-411	54-37.3

COMPARATIVE TABLES
(Asbestos Contractors and Workers)

NEW TITLE 54.1

OLD TITLE 54

Chapter 5

Chapter 7.01

§ 54.1-500
54.1-501
54.1-502
54.1-503
54.1-504
54.1-505
54.1-506
54.1-507
54.1-508
54.1-509
54.1-510
54.1-511
54.1-512
54.1-513
54.1-514
54.1-515
54.1-516
54.1-517

§ 54-145.4
54-145.5
54-145.6
54-145.7
54-145.8
54-145.9
54-145.10
54-145.10:1
54-145.10:2
54-145.10:3
54-145.10:4
54-145.10:5
54-145.10:6
54-145.10:7
54-145.10:8
54-145.10:9
54-145.10:10
54-145.10:11

Comparative Tables
(Boxing and Wrestling Matches)

NEW TITLE 54.1

TITLE 9

Chapter 8

Chapter 4

§ 54.1-800
54.1-801
54.1-802
54.1-803
54.1-804
54.1-805

§ 9-46.1
9-16.2
9-16.1
9-47
9-48
9-16
9-17
9-19
9-46

54.1-806
54.1-807
54.1-808
54.1-809
54.1-810

9-22
9-29
9-34
9-23
9-25
9-27

54.1-811
54.1-812
54.1-813
54.1-814
54.1-815
54.1-816
54.1-817
54.1-818
54.1-819
54.1-820
54.1-821
54.1-822
54.1-823
54.1-824
54.1-825
54.1-826

9-28
9-38
9-24
9-29
9-29.1
9-30
9-37
9-39
9-35
9-45
9-45.1
9-33
9-40
9-41
9-42
9-43

COMPARATIVE TABLES
(Branch Pilots)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 9	Chapter 16
§ 54.1-900	§ 54-525
54.1-901	54-527
	54-528
	54-530
	54-531
54.1-902	54-529
54.1-903	54-533
	54-534
54.1-904	54-535
54.1-905	54-536
	54-555
54.1-906	54-537
	54-538
54.1-907	54-539
	54-540
54.1-908	54-541
54.1-909	54-542
	54-543
54.1-910	54-544
54.1-911	54-547
54.1-912	54-548
54.1-913	54-549
54.1-914	54-550
54.1-915	54-554
54.1-916	54-558
54.1-917	54-561
54.1-918	54-562
54.1-919	54-563
54.1-920	54-564
54.1-921	54-565
54.1-922	54-566
54.1-923	54-569
54.1-924	54-571
54.1-925	54-572
54.1-926	54-573
54.1-927	

Comparative Tables
(Auctioneers)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 6	Chapter 20.1
§ 54.1-600	§ 54-824.2
54.1-601	54-824.3
54.1-602	54-824.4
	54-824.7
	54-824.9:3
54.1-603	54-824.9:1
54.1-604	54-824.9:2
	54-824.17
54.1-605	54-824.15
54.1-606	54-824.19

Comparative Tables
(Barbers)

NEW TITLE 54.1

OLD TITLE 54

Chapter 7

§ 54.1-700
54.1-701
54.1-702
54.1-703
54.1-704
54.1-705

Chapter 4.1

§ 54-83.2
54-83.5
54-83.22
54-83.22:1
54-83.22:2
54-83.27

Comparative Tables
(Commercial Driving Training Schools)

NEW TITLE 54.1

OLD TITLE 54

Chapter 10

Chapter 7.1

§ 54.1-1000
54.1-1001
54.1-1002
54.1-1003

§ 54-145.11
54-145.12
54-145.13
54-145.20

Comparative Tables
(Contractors)

NEW TITLE 54.1

OLD TITLE 54

Chapter 11

Chapter 7

§ 54.1-1100
54.1-1101
54.1-1102

§ 54-113

54-141

54-114

54-115

54-119

54-120

54-121

54-123

54-124

54-128

54-125

54-126

54-129.1

54-129.2

54-129.3

54-131

54-132.1

54-138

54-139

54-140

54-133

54-142

54-144

54-145.2

54-145.3:1

54-145.3:2

54-145.3:3

54-145.3:3.1

54-145.3:4

54-145.3:5

54-145.3:6

54-145.3:7

54-145.3:8

54-145.3:9

54.1-1103

54.1-1104

54.1-1105

54.1-1106

54.1-1107

54.1-1108

54.1-1109

54.1-1110

54.1-1111

54.1-1112

54.1-1113

54.1-1114

54.1-1115

54.1-1116

54.1-1117

54.1-1118

54.1-1119

54.1-1120

54.1-1121

54.1-1122

54.1-1123

54.1-1124

54.1-1125

54.1-1126

54.1-1127

Comparative Tables
(Cosmetologists)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 12	Chapter 6.1
§ 54.1-1200	§ 54-112.2
54.1-1201	54-112.1
	54-112.29
54.1-1202	54-112.4:2
	54-112.7
	54-112.8
54.1-1203	54-112.3
54.1-1204	54-112.3:1
54.1-1205	54-112.26
54.1-1206	54-112.26:1
54.1-1207	54-112.26:2

Comparative Tables
(Employment Agencies)

NEW TITLE 54.1

OLD TITLE 54

Chapter 13

Chapter 24.2

§ 54.1-1300
54.1-1301
54.1-1302

54.1-1303
54.1-1304
54.1-1305
54.1-1306
54.1-1307
54.1-1308

§ 54-872.16
54-872.16
54-872.18
54-872.23:1
54-872.17
54-872.20
54-872.19
54-872.21
54-872.22
54-872.24

Comparative Tables
(Geologists)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 14	Chapter 30
§ 54.1-1400	§ 54-962
54.1-1401	54-968
54.1-1402	54-963
54.1-1403	54-964
	54-965
54.1-1404	54-966
54.1-1405	54-967

COMPARATIVE TABLES
(Hearing Aid Specialists)

NEW TITLE 54.1

Chapter 15

§ 54.1-1500
54.1-1501

54.1-1502

54.1-1503
54.1-1504

OLD TITLE 54

Chapter 15.2

§ 54-524.110
54-524.111
54-524.112
54-524.113
54-524.116
54-524.114
54-524.111

COMPARATIVE TABLES
(Librarians)

NEW TITLE 54.1

OLD TITLE 54

Chapter 16

§ 54.1-1600
54.1-1601
54.1-1602
54.1-1603
54.1-1604
54.1-1605
54.1-1606

Chapter 11

§ 54-271
54-572
54-262
54-264
54-268.1
54-271.1
54-271

COMPARATIVE TABLES
(Opticians)

NEW TITLE 54.1

OLD TITLE 54

Chapter 17

Chapter 14.1

§ 54.1-1700
54.1-1701
54.1-1702

54.1-1703
54.1-1704
54.1-1705

§ 54-398.2
54-398.1
54-398.4:1
54-398.10
54-398.5
54-398.3
54-398.27

COMPARATIVE TABLES
(Polygraph Examiners)

NEW TITLE 54.1

Chapter 18

§ 54.1-1800
54.1-1801
54.1-1802
54.1-1803
54.1-1804
54.1-1805

OLD TITLE 54

Chapter 27

§ 54-916
54-918
54-917
54-920
54-921
54-922

COMPARATIVE TABLES
(Private Security Services Businesses)

NEW TITLE 54.1

OLD TITLE 54

Chapter 19

Chapter 17.3

§ 54.1-1900
54.1-1901
54.1-1902
54.1-1903
54.1-1904
54.1-1905
54.1-1906
54.1-1907
54.1-1908

§ 54-729.27
54-729.28
54-729.29
54-729.30
54-729.30
54-729.31
54-729.32
54-729.33
54-729.34

Comparative Tables
(Public Accountancy)

NEW TITLE 54.1

OLD TITLE 54

Chapter 20

Chapter 5.3

§ 54.1-2000
54.1-2001
54.1-2002

54.1-2003
54.1-2004
54.1-2005
54.1-2006
54.1-2007
54.1-2008

§ 54-102.25
54-102.33
54-102.24
54-102.26
54-102.27
54-102.28
54-102.29
54-102.30
54-102.31
54-102.32

Comparative Tables
(Real Estate Brokers, Sales Persons
and Rental Location Agents)

NEW TITLE 54.1

OLD TITLE 54

Chapter 21

Chapter 18

§ 54.1-2100
54.1-2101
54.1-2102
54.1-2103
54.1-2104

§ 54-730
54-731
54-731.1
54-734
54-737
54-738
54-739
54-744
54-740
54-749
54-732
54-764.5
54-731.3
54-733
54-773
54-774
54-765.2
54-765.3
54-765.4
54-765.4:1
54-765.5
54-765.6
54-765.7
54-765.8
54-765.9

54.1-2105
54.1-2106
54.1-2107
54.1-2108
54.1-2109
54.1-2110
54.1-2111

54.1-2112
54.1-2113
54.1-2114
54.1-2115
54.1-2116
54.1-2117
54.1-2118
54.1-2119
54.1-2120

Comparative Tables
(Soil Scientists)

NEW TITLE 54.1

OLD TITLE 54

Chapter 22

Chapter 31

§ 54.1-2200
54.1-2201
54.1-2202
54.1-2203
54.1-2204
54.1-2205
54.1-2206
54.1-2207
54.1-2208

§ 54-969
54-970
54-972
54-973
54-974
54-975
54-976
54-977
54-971

Comparative Tables
(Waterworks and Wastewater Works Operators)

NEW TITLE 54.1

OLD TITLE 54

Chapter 23

Chapter 16.1

§ 54.1-2300
54.1-2301

54.1-2302

§ 54-573.2
54-573.1
54-573.3
54-573.18

COMPARATIVE TABLES
(GENERAL PROVISIONS-SUBTITLE III
DEPARTMENT OF HEALTH PROFESSIONS)

NEW TITLE 54.1

OLD TITLE 54

Chapter 24

Chapter 29

§54.1-2400
§54.1-2401
§54.1-2402
§54.1-2403

§54-961
§54-950.3
§54-959.1

COMPARATIVE TABLES
(DEPARTMENT OF HEALTH PROFESSIONS)

NEW TITLE 54.1

OLD TITLE 54

Chapter 25

Chapter 29

§54.1-2500
§54.1-2501
§54.1-2502
§54.1-2503
§54.1-2504
§54.1-2505
§54.1-2506
§54.1-2507
§54.1-2508
§54.1-2509
§54.1-2510

§54-950
§54-950.1
§54-960.1
§54-950.2
§54-954.1
§54-955
§54-960
§54-951
§54-953
§54-954
§54-955.1

COMPARATIVE TABLES
(AUDIOLOGY AND SPEECH PATHOLOGY)

NEW TITLE 54.1

Chapter 26

§54.1-2600
§54.1-2601
§54.1-2602

§54.1-2603

OLD TITLE 54

Chapter 4.01

§54-83.1:5
§54-83.1:7
§54-83.1:8
§54-83.1:8.1
§54-83.1:10
§54-83.1:011

COMPARATIVE TABLES
(DENTISTRY)

NEW TITLE 54.1

OLD TITLE 54

Chapter 27

Chapter 8.1

§54.1-2700
§54.1-2701

§54-200.1
§54-149
§54-150
§54-151
§54-172
§54-200.23

§54.1-2702

§54-153
§54-154
§54-155
§54-157
§54-161
§54-162

§54.1-2703
§54.1-2704
§54.1-2705
§54.1-2706
§54.1-2707
§54.1-2708
§54.1-2709

§54-167
§54-156
§54-176
§54-187
§54-189
§54-189.1
§54-168
§54-169
§54-170
§54-171
§54-175

§54.1-2710
§54.1-2711
§54.1-2712
§54.1-2713
§54.1-2714
§54.1-2715
§54.1-2716
§54.1-2717
§54.1-2718
§54.1-2719

§54-172
§54-146
§54-147
§54-175.1
§54-175.2
§54-152
§54-147.1
§54-183
§54-184
§54-147.2

COMPARATIVE TABLES
(DENTISTRY -- CON.)

§54.1-2720	§54-186
§54.1-2721	§54-197
§54.1-2722	§54-200.2
	§54-200.4
	§54-200.7
	§54-200.8
	§54-200.9
	§54-200.11
§54.1-2723	§54-200.20
§54.1-2724	§54-200.6
§54.1-2725	§54-175.1
§54.1-2726	§54-152
§54.1-2727	§54-200.14
§54.1-2728	§54-200.18

COMPARATIVE TABLES
(FUNERAL SERVICES)

NEW TITLE 54.1

OLD TITLE 54

Chapter 28

Chapter 10.2

§54.1-2800
§54.1-2801

§54.1-2802

§54-260.67
§54-260.67
§54-260.70
§54-260.64
§54-260.65
§54-260.68
§54-260.69
§54-260.69
§54-260.70
§54-260.73:1
§54-260.74
§54-260.74
§54-260.74
§54-260.74
§54-260.75
§54-260.73
§54-260.73
§54-260.71:1
§54-260.70
§54-260.70
§54-260.70:1
§54-260.70:2
§54-260.72
§54-260.71
§54-260.74:1

§54.1-2803
§54.1-2804
§54.1-2805
§54.1-2806
§54.1-2807
§54.1-2808
§54.1-2809
§54.1-2810
§54.1-2811
§54.1-2812
§54.1-2813
§54.1-2814
§54.1-2815
§54.1-2816
§54.1-2817
§54.1-2818
§54.1-2819

COMPARATIVE TABLES
(MEDICINE AND OTHER HEALING ARTS)

NEW TITLE 54.1

OLD TITLE 54

Chapter 29

Chapter 12

§54.1-2900
§54.1-2901

§54-273
§54-273
§54-274
§54-276
§54-276.1
§54-276.2
§54-276.3
§54-276.4
§54-276.5
§54-276.6

§54.1-2902
§54.1-2903
§54.1-2904
§54.1-2905
§54.1-2906
§54.1-2907
§54.1-2908
§54.1-2909
§54.1-2910
§54.1-2911

§54-274
§54-275
§54-315.1
§54-315.2
§54-325.1
§54-317.3
§54-317.4
§54-317.4:1
§54-317.5
§54-282
§54-283
§54-287
§54-289
§54-290
§54-290.1
§54-290.2
§54-284
§54-300.2
§54-300.3
§54-304
§54-317
§54-316
§54-317

§54.1-2912
§54.1-2913

§54.1-2914
§54.1-2915

COMPARATIVE TABLES
(MEDICINE -- CON.)

§54.1-2916	§54-317.1
§54.1-2917	§54-321.2
§54.1-2918	§54-321.1
§54.1-2919	§54-318.1
§54.1-2920	§54-318.3
§54.1-2921	§54-321
§54.1-2922	§54-321.3
	§54-321.4
	§54-321.5
	§54-321.6
	§54-321.7
	§54-321.8
§54.1-2923	§54-321.2:1
§54.1-2924	§54-291.1
§54.1-2925	§54-318.4
§54.1-2926	§54-318.2
§54.1-2927	§54-276.5
	§54-310
§54.1-2928	§54-311
§54.1-2929	§54-281
	§54-281.3
§54.1-2930	§54-305
§54.1-2931	§54-297
§54.1-2932	§54-309
§54.1-2933	§54-306.1:1
§54.1-2934	§54-306.2
§54.1-2935	§54-306.3
§54.1-2936	§54-311.1
	§54-311.2
§54.1-2937	§54-311.3
§54.1-2938	§54-279
§54.1-2939	§54-275.2
§54.1-2940	§54-309.1
§54.1-2941	§54-275.1
§54.1-2942	§54-281.1
§54.1-2943	§54-274
	§54-281.2
	§54-308.6
	§54-310
§54.1-2944	§54-295.1
	§54-295.2
§54.1-2945	§54-295.3
§54.1-2946	§54-295.6
§54.1-2947	§54-308.5
§54.1-2948	§54-303.6
§54.1-2949	
§54.1-2950	§54-281.7
§54.1-2951	§54-281.6
§54.1-2952	§54-281.4
	§54-281.5
§54.1-2953	§54-281.3
	§54-281.9

COMPARATIVE TABLES
(MEDICINE -- CON.)

§54.1-2954	§54-281.10
§54.1-2955	§54-281.11
§54.1-2956	§54-281.12
	§54-281.13.
§54.1-2957	§54-274
§54.1-2958	§54-306.1:2
§54.1-2959	§54-276.7:2
§54.1-2960	§54-276.7:1
§54.1-2961	§54-276.7
§54.1-2962	§54-278
§54.1-2963	§54-278.2
§54.1-2964	§54-278.3
§54.1-2965	§54-274.1
§54.1-2966	§54-276.9:1
§54.1-2967	§54-276.10
§54.1-2968	§54-276.11
§54.1-2969	§54-325.2
§54.1-2970	§54-325.2:1
§54.1-2971	§54-325.2:2
§54.1-2972	§54-325.7
§54.1-2973	§54-325.8
§54.1-2974	§54-325.9
§54.1-2975	§54-325.10
§54.1-2976	§54-325.11
§54.1-2977	§54-325.12
§54.1-2978	§54-325.13
§54.1-2979	§54-325.14
§54.1-2980	§54-325.15
§54.1-2981	§54-325.8:1
§54.1-2982	§54-325.8:2
§54.1-2983	§54-325.8:3
§54.1-2984	§54-325.8:4
§54.1-2985	§54-325.8:5
§54.1-2986	§54-325.8:6
§54.1-2987	§54-325.8:7
§54.1-2988	§54-325.8:8
§54.1-2989	§54-325.8:9
§54.1-2990	§54-325.8:10
§54.1-2991	§54-325.8:11
§54.1-2992	§54-325.8:12

COMPARATIVE TABLES
(NURSING)

NEW TITLE 54.1

OLD TITLE 54

CHAPTER 30

CHAPTER 13.1

§54.1-3000
§54.1-3001
§54.1-3002

§54.1-3003
§54.1-3004
§54.1-3005
§54.1-3006
§54.1-3007
§54.1-3008
§54.1-3009
§54.1-3010
§54.1-3011
§54.1-3012
§54.1-3013

§54.1-3014
§54.1-3015
§54.1-3016
§54.1-3017
§54.1-3018
§54.1-3019
§54.1-3020
§54.1-3021

§54-367.2
§54-367.36
§54-367.3
§54-367.4
§54-367.10
§54-367.12
§54-367.9
§54-367.4:1
§54-367.11
§54-367.11
§54-367.32
§54-367.35
§54-367.33:1
§54-367.33:2
§54-367.25
§54-367.11:1
§54-367.27
§54-367.29
§54-367.28
§54-367.30
§54-367.17
§54-367.13
§54-367.14
§54-367.23
§54-367.19
§54-367.20

COMPARATIVE TABLES
(NURSING HOME ADMINISTRATORS)

NEW TITLE 54.1

OLD TITLE 54

Chapter 31

Chapter 26

§54.1-3100
§54.1-3101

§54-900
§54-903
§54-903.1
§54-907
§54-901.1
§54-901

§54.1-3102
§54.1-3103

COMPARATIVE TABLES
(OPTOMETRY)

NEW TITLE 54.1

OLD TITLE 54

Chapter 32

Chapter 14

§54.1-3200
§54.1-3201
§54.1-3202
§54.1-3203
§54.1-3204
§54.1-3205

§54.1-3206
§54.1-3207

§54.1-3208
§54.1-3209
§54.1-3210
§54.1-3211

§54.1-3212
§54.1-3213

§54.1-3214
§54.1-3215
§54.1-3216
§54.1-3217
§54.1-3218
§54.1-3219
§54.1-3220
§54.1-3221

§54-368
§54-368
§54-369
§54-386
§54-396
§54-397.1
§54-388
§54-398.02
§54-370
§54-371
§54-375
§54-372
§54-377
§54-378
§54-380
§54-381
§54-382
§54-382
§54-383
§54-393
§54-394
§54-384
§54-388
§54-388
§54-388.1
§54-391
§54-394.1
§54-386.1
§54-386.2

COMPARATIVE TABLES
(PHARMACY)

NEW TITLE 54.1

OLD TITLE 54

Chapter 33

Chapter 15.1

§54.1-3300
§54.1-3301

§54-524.2
§54-524.53
§54-524.54
§54-524.53
§54-524.50:1
§54-524.34:1

§54.1-3302
§54.1-3303
§54.1-3304
§54.1-3305

§54-524.5
§54-524.6
§54-524.11
§54-524.13
§54-524.7
§54-524.16
§54-524.18

§54.1-3306
§54.1-3307

§54-524.19
§54-524.99
§54-524.48
§54-524.23
§54-524.24
§54-524.25

§54.1-3308
§54.1-3309
§54.1-3310
§54.1-3311

§54-524.21
§54-524.26
§54-524.30
§54-524.35
§54-524.22:1
§54-524.22:2

§54.1-3312
§54.1-3313
§54.1-3314
§54.1-3315
§54.1-3316
§54.1-3317
§54.1-3318

§54-524.28

COMPARATIVE TABLES
(DRUG CONTROL ACT)

NEW TITLE 54.1

OLD TITLE 54

Chapter 34

Chapter 15.1

§54.1-3400	§54-524.1
§54.1-3401	§54-524.2
§54.1-3402	§54-524.47
§54.1-3403	§54-524.4
§54.1-3404	§54-524.56
§54.1-3405	§54-524.57
§54.1-3406	§54-524.58
§54.1-3407	§54-524.59.1
§54.1-3408	§54-524.65
§54.1-3409	§54-524.66
§54.1-3410	§54-524.67
§54.1-3411	§54-524.68
§54.1-3412	§54-524.69
§54.1-3413	§54-524.58:1
§54.1-3414	§54-524.60
§54.1-3415	§54-524.59
§54.1-3416	§54-524.75
§54.1-3417	§54-524.61
§54.1-3418	§54-524.62
§54.1-3419	§54-524.67:3
§54.1-3420	§54-524.58:2
§54.1-3421	§54-524.95
§54.1-3422	§54-524.47:2
§54.1-3423	§54-524.47:3
§54.1-3424	§54-524.47:4
§54.1-3425	§54-524.47:1
§54.1-3426	§54-524.67:1
§54.1-3427	§54-524.67:2
§54.1-3428	§54-524.100
§54.1-3429	§54-524.46
§54.1-3430	§54-524.38
	§54-524.39
§54.1-3431	§54-524.77:1
§54.1-3432	§54-524.51
§54.1-3433	§54-524.49
§54.1-3434	§54-524.31
§54.1-3435	§54-524.44
§54.1-3436	§54-524.45
§54.1-3437	§54-524.36
§54.1-3438	§54-524.37

COMPARATIVE TABLES
(DRUG CONTROL ACT -- CON.)

§54.1-3439	§54-524.40
§54.1-3440	§54-524.41
§54.1-3441	§54-524.41:1
§54.1-3442	§54-524.41:2
§54.1-3443	§54-524.84:1
§54.1-3444	§54-524.84:2
§54.1-3445	§54-524.84:3
§54.1-3446	§54-524.84:4
§54.1-3447	§54-524.84:5
§54.1-3448	§54-524.84:6
§54.1-3449	§54-524.84:7
§54.1-3450	§54-524.84:8
§54.1-3451	§54-524.84:9
§54.1-3452	§54-524.84:10
§54.1-3453	§54-524.84:11
§54.1-3454	§54-524.84:12
§54.1-3455	§54-524.84:13
§54.1-3456	§54-524.84:14
§54.1-3457	§54-524.85
§54.1-3458	§54-524.87
§54.1-3459	§54-524.88
§54.1-3460	§54-524.91
§54.1-3461	§54-524.92
§54.1-3462	§54-524.93
§54.1-3463	§54-524.94
§54.1-3464	§54-524.96
§54.1-3465	§54-524.97
§54.1-3466	§54-524.109:1
§54.1-3467	§54-524.109:2
§54.1-3468	§54-524.109:3
§54.1-3469	§54-524.109:4
§54.1-3470	§54-524.109:5
§54.1-3471	§54-524.109:7
§54.1-3472	§54-524.109:8

COMPARATIVE TABLES
(PROFESSIONAL COUNSELING)

NEW TITLE 54.1

OLD TITLE 54

Chapter 35

Chapter 28

§54.1-3500

§54-924

§54.1-3501

§54-932

§54.1-3502

§54-944

§54.1-3503

§54-945

§54.1-3504

§54-933

§54.1-3505

§54-933.2

§54.1-3506

§54-929

§54-931

§54-935.1

COMPARATIVE TABLES
(PSYCHOLOGY)

NEW TITLE 54.1

OLD TITLE 54

Chapter 36

Chapter 28

§54.1-3600
§54.1-3601
§54.1-3602
§54.1-3603
§54.1-3604
§54.1-3605

§54.1-3606
§54.1-3607
§54.1-3608

§54-936
§54-944
§54-945
§54-937
§54-937.1
§54-929
§54-931
§54-939.1
§54-938
§54-939

COMPARATIVE TABLES
(SOCIAL WORK)

NEW TITLE 54.1

OLD TITLE 54

Chapter 37

Chapter 28

§54.1-3700
§54.1-3701
§54.1-3702
§54.1-3703
§54.1-3704
§54.1-3705

§54.1-3706
§54.1-3707

§54-941
§54-944
§54-945
§54-942
§54-942.1
§54-929
§54-931
§54-943.1
§54-943

COMPARATIVE TABLES
(VETERINARY MEDICINE)

NEW TITLE 54.1

OLD TITLE 54

Chapter 38

Chapter 19

§54.1-3800
§54.1-3801
§54.1-3802

§54-786
§54-786
§54-776
§54-777
§54-783
§54-784

§54.1-3803
§54.1-3804
§54.1-3805
§54.1-3806
§54.1-3807
§54.1-3808
§54.1-3809
§54.1-3810

§54-777.1
§54-784.03
§54-786.2
§54-786.3
§54-786.4
§54-786.5
§54-786.6
§54-786.8

COMPARATIVE TABLES
(Attorneys)

NEW TITLE 54.1

OLD TITLE 54

Chapter 39

Chapter 4

§ 54.1-3900
54.1-3901

54.1-3902

54.1-3903
54.1-3904
54.1-3905
54.1-3906
54.1-3907
54.1-3908
54.1-3909
54.1-3910
54.1-3911
54.1-3912
54.1-3913
54.1-3914
54.1-3915
54.1-3916
54.1-3917
54.1-3918
54.1-3919

54.1-3920
54.1-3921
54.1-3922
54.1-3923
54.1-3924
54.1-3925
54.1-3926
54.1-3927
54.1-3928
54.1-3929
54.1-3930
54.1-3931
54.1-3932
54.1-3933
54.1-3934
54.1-3935

§ 54-42
54-42.1
54-42.2
54-42.1
54-42.2
54-43
54-44
54-44.1
54-46
54-44.2
54-47
54-48
54-49
54-49.1
54-50
54-52
54-50.1
54-51
54-52.1
54-52.2
54-52.2:1
54-53
54-55
54-54
54-56
54-57.1
54-58
54-59
54-60
54-62
54-63
54-64
54-65
54-66
54-67
54-70
54-71
54-72
54-74
54-75

COMPARATIVE TABLES
(Attorneys -- continued)

<u>NEW TITLE 54.1</u>	<u>OLD TITLE 54</u>
Chapter 39	Chapter 4
§ 54.1-3936	§ 54-74.01
54.1-3937	54-74.1
54.1-3938	54-76
54.1-3939	54-78
	54-83.1:1
	54-83.1:2
54.1-3940	54-83.1:2
54.1-3941	54-79
54.1-3942	54-83
	54-83.1:4
54.1-3943	54-83.1
54.1-3944	54-82
	54-83.1:3

COMPARATIVE TABLES
(Pawnbrokers)

NEW TITLE 54.1

OLD TITLE 54

Chapter 40

Chapter 23

§ 54.1-4000
54.1-4001

54.1-4002
54.1-4003
54.1-4004
54.1-4005
54.1-4006
54.1-4007
54.1-4008
54.1-4009
54.1-4010
54.1-4011

54.1-4012
54.1-4013
54.1-4014

§ 54-840
54-841
54-842
54-843
54-845
54-846
54-847
54-848
54-849
54-850
54-851
54-853
54-852
54-854
54-855
54-856
54-857
54-858

COMPARATIVE TABLES
(Precious Metals Dealers)

NEW TITLE 54.1

OLD TITLE 54

Chapter 41

§ 54.1-4100
54.1-4101
54.1-4102
54.1-4103
54.1-4104
54.1-4105
54.1-4106
54.1-4107
54.1-4108
54.1-4109

54.1-4110
54.1-4111

Chapter 23.2

§ 54-859.15
54-859.16
54-859.17
54-859.18
54-859.19
54-859.20
54-859.21
54-859.22
54-859.23
54-859.24
54-859.27
54-859.28
54-859.25
54-859.26

COMPARATIVE TABLES
(Precious Metals Dealers)

NEW TITLE 54.1

OLD TITLE 54

Chapter 42

Chapter 23.2

§ 54.1-4200
54.1-4201
54.1-4202
54.1-4203
54.1-4204
54.1-4205
54.1-4206
54.1-4207
54.1-4208
54.1-4209

54.1-4210
54.1-4211

§ 54-859.15
54-859.16
54-859.17
54-859.18
54-859.19
54-859.20
54-859.21
54-859.22
54-859.23
54-859.24
54-859.27
54-859.28
54-859.25
54-859.26

Comparative Tables
(General Provisions to Regulatory Boards -- Subtitle I)
(General Provisions for the Regulatory Boards Within
The Department of Commerce -- Subtitle II)
(Department of Commerce)

OLD TITLE 54

NEW TITLE 54.1

Chapters 1 and 1.1

Chapters 1, 2 and 3

§ 54-1	§ 54.1-101
54-1.1	54.1-102
54-1.2	54.1-102
54-1.2:1	54.1-104
54-1.2:2	54.1-106
54-1.2:3	54.1-114
54-1.3 through 54-1.16	Repealed
54-1.17	54.1-100
54-1.18	54.1-300
54-1.18:1	54.1-107
54-1.19	54.1-109
54-1.20	54.1-111
54-1.21	54.1-204
54-1.22	54.1-202
54-1.22:1	54.1-203
54-1.23	54.1-309
54-1.24	54.1-309
54-1.25	54.1-310
54-1.26	54.1-311
54-1.27	54.1-200
54-1.28	54.1-103
54-1.28:1	54.1-201
54-1.29	54.1-113
54-1.30	Repealed
54-1.31	54.1-301
54-1.32	54.1-302
54-1.33	54.1-303
54-1.34	54.1-304
54-1.35	54.1-305
54-1.36	Deleted
54-1.37	Repealed
54-1.38	54.1-110
54-1.39	Repealed
54-1.40	54.1-306
54-1.41	54.1-307
54-1.42	54.1-108
	54.1-308

Comparative Tables
(Architects, Engineers, Land Surveyors
and Landscape Architects)

<u>OLD TITLE 54</u>	<u>NEW TITLE 54.1</u>
Chapter 3	Chapter 4
§ 54-17	Repealed
54-17.1	§ 54.1-400
	54.1-408
	54.1-409
54-18	Repealed
54-18.1	54.1-403
54-19	54.1-403
54-20	Repealed
54-21	Repealed
54-22	54.1-403
54-23	54.1-403
54-24	Repealed
54-25	54.1-404
54-25.1	54.1-407
54-26	54.1-405
54-26.1	54.1-406
54-26.2	Deleted
54-27 through 54-36	Repealed
54-37	54.1-401
54-37.1	54.1-402
54-37.2	54.1-410
54-37.3	54.1-411
54-38	Deleted
54-39	Repealed
54-40	Repealed
54-41	Deleted

COMPARATIVE TABLES

(Attorneys)

OLD TITLE 54

NEW TITLE 54.1

Chapter 4

Chapter 39

<p>§ 54-42</p> <p>54-42.1</p> <p>54-42.2</p> <p>54-42.3</p> <p>54-43</p> <p>54-44</p> <p>54-44.1</p> <p>54-44.2</p> <p>54-45</p> <p>54-46</p> <p>54-47</p> <p>54-48</p> <p>54-49</p> <p>54-49.1</p> <p>54-50</p> <p>54-50.1</p> <p>54-51</p> <p>54-52</p> <p>54-52.1</p> <p>54-52.2</p> <p>54-52.2:1</p> <p>54-52.3</p> <p>54-53</p> <p>54-54</p> <p>54-55</p> <p>54-56</p> <p>54-57</p> <p>54-57.1</p> <p>54-58</p> <p>54-59</p> <p>54-60</p> <p>54-61</p> <p>54-61.1</p> <p>54-62</p> <p>54-62.1</p> <p>54-62.2</p> <p>54-63</p> <p>54-64</p> <p>54-65</p> <p>54-66</p> <p>54-67</p> <p>54-68</p> <p>54-69</p>	<p>§ 54.1-3900</p> <p>54.1-3901</p> <p>54.1-3902</p> <p>54.1-3902</p> <p>Deleted</p> <p>54.1-3903</p> <p>54.1-3904</p> <p>54.1-3905</p> <p>54.1-3907</p> <p>Deleted</p> <p>54.1-3906</p> <p>54.1-3908</p> <p>54.1-3909</p> <p>54.1-3910</p> <p>54.1-3911</p> <p>54.1-3912</p> <p>54.1-3914</p> <p>54.1-3915</p> <p>54.1-3913</p> <p>54.1-3916</p> <p>54.1-3917</p> <p>54.1-3918</p> <p>Deleted</p> <p>54.1-3919</p> <p>54.1-3920</p> <p>54.1-3919</p> <p>54.1-3921</p> <p>Repealed</p> <p>54.1-3922</p> <p>54.1-3923</p> <p>54.1-3924</p> <p>54.1-3925</p> <p>Repealed</p> <p>Repealed</p> <p>54.1-3926</p> <p>Repealed</p> <p>Deleted</p> <p>54.1-3927</p> <p>54.1-3928</p> <p>54.1-3929</p> <p>54.1-3930</p> <p>54.1-3931</p> <p>Repealed</p> <p>Deleted</p>
--	--

COMPARATIVE TABLES
(Attorneys -- continued)

<u>OLD TITLE 54</u>	<u>NEW TITLE 54.1</u>
Chapter 4	Chapter 39
§ 54-70	§ 54.1-3932
54-71	54.1-3933
54-72	54.1-3934
54-73	Deleted
54-74	54.1-3935
54-74.01	54.1-3936
54-74.1	54.1-3937
54-75	54.1-3935
54-76	54.1-3938
54-77	Deleted
54-78	54.1-3939
54-79	54.1-3941
54-80	Repealed
54-81	Repealed
54-82	54.1-3944
54-83	54.1-3942
54-83.1	54.1-3943
54-83.1:1	54.1-3939
54-83.1:2	54.1-3939
54-83.1:3	54.1-3940
54-83.1:4	54.1-3944
	54.1-3942

COMPARATIVE TABLES
(AUDIOLOGISTS AND SPEECH PATHOLOGISTS)

OLD TITLE 54

NEW TITLE 54.1

Chapter 4.01

Chapter 26

§54-83.1:5	§54.1-2600
§54-83.1:6	repealed
§54-83.1:7	§54.1-2601
§54-83.1:8	§54.1-2602
§54-83.1:8.1	§54.1-2602
§54-83.1:09	repealed
§54-83.1:10	§54.1-2602
§54-83.1:011	§54.1-2603
§54-83.1:11 - §54-83.1:13	repealed
§54-83.1:14 - §54-83.1:22	repealed
§54-83.1:23	repealed
§54-83.1:24	repealed
§54-83.1:25	repealed

Comparative Tables
(Barbers)

OLD TITLE 54

NEW TITLE 54.1

Chapter 4.1

Chapter 7

§ 54-83.2
54-83.3
54-83.4
54-83.5
54-83.6
54-83.7
54-83.8
54-83.9
54-83.10
54-83.11
54-83.12
54-83.13
54-83.14
54-83.15
54-83.16
54-83.17
54-83.18
54-83.19
54-83.20
54-83.21
54-83.22
54-83.22:1
54-83.22:2
54-83.23
54-83.24
54-83.25
54-83.26
54-83.27
54-83.28

§ 54.1-700
Repealed
Repealed
54.1-701
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
54.1-702
54.1-703
54.1-704
Repealed
Repealed
Repealed
Repealed
54.1-705
Deleted

Comparative Tables
(Public Accountancy)

OLD TITLE 54

NEW TITLE 54.1

Chapter 5.3

Chapter 20

§ 54-102.24
54-102.25
54-102.26
54-102.27
54-102.28
54-102.29
54-102.30
54-102.31
54-102.32
54-102.33
54-102.34
54-102.35

§ 54.1-2002
54.1-2000
54.1-2002
54.1-2003
54.1-2004
54.1-2005
54.1-2006
54.1-2007
54.1-2008
54.1-2001
Deleted
Deleted

Comparative Tables
(Cosmetologists)

OLD TITLE 54

NEW TITLE 54.1

Chapter 6.1

Chapter 12

§ 54-112.1
54-112.2
54-112.3
54-112.3:1
54-112.4
54-112.4:1
54-112.4:2
54-112.5
54-112.6
54-112.7
54-112.8
54-112.9 through 54-112.25
54-112.26
54-112.26:1
54-112.26:2
54-112.27
54-112.28
54-112.29

§ 54.1-1201
54.1-1200
54.1-1203
54.1-1204
Repealed
Repealed
54.1-1202
Repealed
Repealed
54.1-1202
54.1-1202
Repealed
54.1-1205
54.1-1206
54.1-1207
Repealed
Repealed
54.1-1201

Comparative Tables
(Contractors)

OLD TITLE 54

NEW TITLE 54.1

Chapter 7

Chapter 11

§ 54-113	§ 54.1-1100
54-113.1	Expired
54-114	54.1-1102
54-115	54.1-1102
54-115.1	Repealed
54-116 through 54-118	Repealed
54-119	54.1-1102
54-120	54.1-1102
54-121	54.1-1102
54-122	Repealed
54-123	54.1-1102
54-124	54.1-1102
54-125	54.1-1104
54-126	54.1-1105
54-127	Repealed
54-128	54.1-1103
54-129	Repealed
54-129.1	54.1-1106
54-129.2	54.1-1107
54-129.3	54.1-1108
54-130	Repealed
54-131	54.1-1109
54-132	Repealed
54-132.1	54.1-1110
54-133	54.1-1114
54-134 through 54-137	Repealed
54-138	54.1-1111
54-139	54.1-1112
54-140	54.1-1113
54-141	54.1-1101
54-142	54.1-1115
54-143	Repealed
54-144	54.1-1116
54-145	Repealed
54-145.1	Repealed
54-145.2	54.1-1117
54-145.3	Deleted
54-145.3:1	54.1-1118
54-145.3:2	54.1-1119
54-145.3:3	54.1-1120
54-145.3:3.1	54.1-1121
54-145.3:4	54.1-1122
54-145.3:5	54.1-1123
54-145.3:6	54.1-1124
54-145.3:7	54.1-1125
54-145.3:8	54.1-1126
54-145.3:9	54.1-1127

COMPARATIVE TABLES
(Asbestos Contractors and Workers)

OLD TITLE 54

NEW TITLE 54.1

Chapter 7.01

§ 54-145.4
54-145.5
54-145.6
54-145.7
54-145.8
54-145.9
54-145.10
54-145.10:1
54-145.10:2
54-145.10:3
54-145.10:4
54-145.10:5
54-145.10:6
54-145.10:7
54-145.10:8
54-145.10:9
54-145.10:10
54-145.10:11

Chapter 5

§ 54.1-500
54.1-501
54.1-502
54.1-503
54.1-504
54.1-505
54.1-506
54.1-507
54.1-508
54.1-509
54.1-510
54.1-511
54.1-512
54.1-513
54.1-514
54.1-515
54.1-516
54.1-517

Comparative Tables
(Commercial Driving Training Schools)

OLD TITLE 54

NEW TITLE 54.1

Chapter 7.1

Chapter 10

§ 54-145.11
54-145.12
54-145.13
54-145.14
54-145.15
54-145.16
54-145.17
54-145.18
54-145.19
54-145.20

§ 54.1-1000
54.1-1001
54.1-1002
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
54.1-1003

COMPARATIVE TABLES
(DENTISTRY)

OLD TITLE 54

NEW TITLE 54.1

Chapter 8.1

Chapter 27

§54-146
§54-147
§54-147.1
§54-147.2
§54-148
§54-149
§54-150
§54-151
§54-152

§54-153
§54-154
§54-155
§54-156
§54-157
§54-158
§54-159
§54-160
§54-161
§54-162
§54-162.1
§54-163
§54-164
§54-165
§54-166
§54-167
§54-168
§54-169
§54-170
§54-171
§54-172

§54-173
§54-174
§54-175
§54-175.1

§54.1-2711
§54.1-2712
§54.1-2716
§54.1-2719
repealed
§54.1-2701
§54.1-2701
§54.1-2701
§54.1-2715
§54.1-2726
§54.1-2702
§54.1-2702
§54.1-2702
§54.1-2704
§54.1-2702
Deleted
Deleted
Deleted
§54.1-2702
§54.1-2702
repealed
deleted
repealed
deleted
deleted
§54.1-2703
§54.1-2709
§54.1-2709
§54.1-2709
§54.1-2709
§54.1-2701
§54.1-2710
deleted
repealed
§54.1-2709
§54.1-2713
§54.1-2725

COMPARATIVE TABLES
(DENTISTRY -- CON.)

§54-175.2	§54.1-2714
§54-176	§54.1-2705
§54-177	deleted
§54-178	deleted
§54-179	repealed
§54-180	deleted
§54-181	repealed
§54-181.1	deleted
§54-182	repealed
§54-183	§54.1-2717
§54-184	§54.1-2718
§54-185	deleted
§54-186	§54.1-2720
§54-187	§54.1-2706
§54-188	repealed
§54-189	§54.1-2707
§54-189.1	§54.1-2708
§54-189.2	repealed
§54-190 through §54-194	repealed
§54-195	deleted
§54-196	deleted
§54-197	§54.1-2721
§54-198	deleted
§54-199	deleted
§54-200	deleted
§54-200.01	deleted
§54-200.02	deleted
§54-200.1	§54.1-2700
§54-200.2	§54.1-2722
§54-200.3	deleted
§54-200.4	§54.1-2722
§54-200.5	deleted
§54-200.6	§54.1-2724
§54-200.7	§54.1-2722
§54-200.8	§54.1-2722
§54-200.9	§54.1-2722
§54-200.10	deleted
§54-200.11	§54.1-2722
§54-200.12	deleted
§54-200.13	deleted
§54-200.14	§54.1-2727 *
§54-200.15	deleted
§54-200.16	repealed
§54-200.16:1	deleted
§54-200.17	repealed
§54-200.18	§54.1-2728
§54-200.19	deleted
§54-200.20	§54.1-2723
§54-200.21	deleted
§54-200.22	deleted
§54-200.23	§54.1-2701

COMPARATIVE TABLES
(FUNERAL SERVICES)

OLD TITLE 54

Chapter 10.2

§54-260.64
§54-260.65
§54-260.66
§54-260.67

§54-260.68
§54-260.69
§54-260.70

§54-260.70:1
§54-260.70:2
§54-260.70:3
§54-260.71
§54-260.71:1
§54-260.72
§54-260.73

§54-260.73:1
§54-260.74

§54-260.74:1
§54-260.75

NEW TITLE 54.1

Chapter 28

§54.1-2802
§54.1-2802
deleted
§54.1-2800
§54.1-2801
§54.1-2802
§54.1-2803
§54.1-2801
§54.1-2804
§54.1-2813
§54.1-2814
§54.1-2815
§54.1-2816
deleted
§54.1-2818
§54.1-2812
§54.1-2817
§54.1-2810
§54.1-2811
§54.1-2805
§54.1-2806
§54.1-2807
§54.1-2808
§54.1-2819
§54.1-2809

COMPARATIVE TABLES
(Librarians)

OLD TITLE 54

NEW TITLE 54.1

Chapter 11

Chapter 16

§ 54-261
54-262
54-263
54-264
54-265
54-266
54-267
54-268
54-268.1
54-269
54-270
54-271

54-271.1
54-272

Deleted
§ 54.1-1602
Repealed
54.1-1603
Repealed
Repealed
Repealed
Repealed
Repealed
54.1-1604
Repealed
Repealed
54.1-1600
54.1-1606
54.1-1605
54.1-1601

COMPARATIVE TABLES
(MEDICINE)

OLD TITLE 54

NEW TITLE 54.1

Chapter 12

Chapter 29

§54-273

§54.1-2900

§54-274

§54.1-2901

§54.1-2901

§54.1-2902

§54.1-2943

§54.1-2957

§54.1-2965

§54-274.1

§54.1-2903

§54-275

§54.1-2941

§54-275.1

§54.1-2939

§54-275.2

§54.1-2901

§54-276

§54.1-2901

§54-276.1

§54.1-2901

§54-276.2

§54.1-2901

§54-276.3

§54.1-2901

§54-276.4

§54.1-2901

§54-276.5

§54.1-2927

§54.1-2901

§54-276.6

§54.1-2961

§54-276.7

§54.1-2960

§54-276.7:1

§54.1-2959

§54-276.7:2

deleted

§54-276.8

repealed

§54-276.9

§54.1-2966

§54-276.9:1

§54.1-2967

§54-276.10

§54.1-2968

§54-276.11

repealed

§54-276.12

repealed

§54-277

§54.1-2962

§54-278

repealed

§54-278.1

§54.1-2963

§54-278.2

§54.1-2964

§54-278.3

§18.2-502.1

§54-278.4

§54.1-2938

§54-279

repealed

§54-280

repealed

§54-280.1

§54.1-2929

§54-281

§54.1-2942

§54-281.1

§54.1-2943

§54-281.2

§54.1-2929

§54-281.3

§54.1-2952

§54-281.4

COMPARATIVE TABLES
(MEDICINE -- CON.)

§54-281.5	§54.1-2952
§54-281.6	§54.1-2951
§54-281.7	§54.1-2950
§54-281.8	§54.1-2953
§54-281.9	§54.1-2953
§54-281.10	§54.1-2954
§54-281.11	§54.1-2955
§54-281.12	§54.1-2956
§54-281.13	§54.1-2956
§54-282	§54.1-2911
§54-283	§54.1-2911
§54-284	§54.1-2912
§54-285	deleted
§54-286	deleted
§54-287	§54.1-2911
§54-288	deleted
§54-289	§54.1-2911
§54-290	§54.1-2911
§54-290.1	§54.1-2911
§54-290.2	§54.1-2911
§54-291	deleted
§54-291.1	§54.1-2924
§54-292	deleted
§54-292.1	deleted
§54-293	deleted
§54-294	deleted
§54-295	deleted
§54-295.1	§54.1-2944
§54-295.2	§54.1-2944
§54-295.3	§54.1-2945
§54-295.4	deleted
§54-295.5	deleted
§54-295.6	§54.1-2946
§54-296	deleted
§54-297	§54.1-2931
§54-298	repealed
§54-299	repealed
§54-300	repealed
§54-300.1	repealed
§54-300.2	§54.1-2913
§54-300.3	§54.1-2913
§54-301 through §54-303	repealed
§54-304	§54.1-2913
§54-305	§54.1-2930
§54-306	repealed
§54-306.01	expired
§54-306.1	repealed
§54-306.1:1	§54.1-2933
§54-306.1:2	§54.1-2958
§54-306.2	§54.1-2934
§54-306.3	§54.1-2935
§54-306.4	repealed

COMPARATIVE TABLES
(MEDICINE -- CON.)

§54-307 through §54-308	repealed
§54-308.1 through §54-308.4	repealed
§54-308.5	§54.1-2947
§54-308.6	§54.1-2942
	§54.1-2943
	§54.1-2948
§54-308.7	deleted
§54-309	§54.1-2932
	§54.1-2942
§54-309.1	§54.1-2940
§54-310	§54.1-2927
	§54.1-2943
§54-310.1	repealed
§54-311	§54.1-2928
§54-311.1	§54.1-2936
§54-311.2	§54.1-2936
§54-311.3	§54.1-2937
§54-312	deleted
§54-313 through §54-315	repealed
§54-315.1	§54.1-2904
§54-315.2	§54.1-2905
§54-315.3	deleted
§54-315.4	deleted
§54-316	§54.1-2915
§54-317	§54.1-2914
	§54.1-2915
§54-317.1	§54.1-2916
§54-317.2	repealed
§54-317.3	§54.1-2907
§54-317.4	§54.1-2908
§54-317.4:1	§54.1-2909
§54-315.5	§54.1-2910
§54-318	repealed
§54-318.1	§54.1-2919
§54-318.2	§54.1-2926
§54-318.3	§54.1-2920
§54-318.4	§54.1-2925
§54-319	repealed
§54-319.1	repealed
§54-320	deleted
§54-321	§54.1-2921
§54-321.1	§54.1-2918
§54-321.2	§54.1-2917
§54-321.2:1	§54.1-2923
§54-321.3	§54.1-2922
§54-321.4	§54.1-2922
§54-321.5	§54.1-2922
§54-321.6	§54.1-2922
§54-321.7	§54.1-2922
§54-321.8	§54.1-2922
§54-322	deleted
§54-323	deleted
§54-324	repealed
§54-325	deleted

COMPARATIVE TABLES
(MEDICINE -- CON.)

§54-325.1	§54.1-2906
§54-325.2	§54.1-2969
§54-325.2:1	§54.1-2970
§54-325.2:2	§54.1-2971
§54-325.3 through §54-325.5	repealed
§54-325.5:1	repealed
§54-326.6	repealed
§54-325.7	§54.1-2972
§54-325.8	§54.1-2973
§54-325.8:1	§54.1-2981
§54-325.8:2	§54.1-2982
§54-325.8:3	§54.1-2983
§54-325.8:4	§54.1-2984
§54-325.8:5	§54.1-2985
§54-325.8:6	§54.1-2986
§54-325.8:7	§54.1-2987
§54-325.8:8	§54.1-2988
§54-325.8:9	§54.1-2989
§54-325.8:10	§54.1-2990
§54-325.8:11	§54.1-2991
§54-325.8:12	§54.1-2992
§54-325.8:13	not set out
§54-325.9	§54.1-2974
§54-325.10	§54.1-2975
§54-325.11	§54.1-2976
§54-325.12	§54.1-2977
§54-325.13	§54.1-2978
§54-325.14	§54.1-2979
§54-325.15	§54.1-2980

COMPARATIVE TABLES
(NURSING)

OLD TITLE 54

Chapter 13.1

§54-367.1
§54-367.2
§54-367.3
§54-367.4
§54-367.4:1
§54-367.5
§54-367.6
§54-367.7
§54-367.8
§54-367.9
§54-367.10
§54-367.11

§54-367.11:1
§54-367.12
§54-367.13
§54-367.14
§54-367.15
§54-367.16
§54-367.17
§54-367.18
§54-367.19
§54-367.20
§54-367.21
§54-367.22
§54-367.23
§54-367.24
§54-367.25
§54-367.26
§54-367.27
§54-367.28
§54-367.29
§54-367.30
§54-367.31
§54-367.32
§54-367.33
§54-367.33:1
§54-367.33:2
§54-367.34
§54-367.35
§54-367.35:1
§54-367.36
§54-367.37

NEW TITLE 54.1

Chapter 30

deleted
§54.1-3000
§54.1-3002
§54.1-3002
§54.1-3004
deleted
deleted
repealed
deleted
§54.1-3003
§54.1-3002
§54.1-3005
§54.1-3006
§54.1-3012
§54.1-3002
§54.1-3017
§54.1-3018
repealed
repealed
§54.1-3016
repealed
§54.1-3020
§54.1-3021
repealed
repealed
§54.1-3019
repealed
§54.1-3011
deleted
§54.1-3013
§54.1-3014
§54.1-3013
§54.1-3015
repealed
§54.1-3007
repealed
§54.1-3009
§54.1-3010
repealed
§54.1-3008
deleted
§54.1-3001
repealed

COMPARATIVE TABLES
(OPTOMETRY)

OLD TITLE 54

NEW TITLE 54.1

Chapter 14

Chapter 32

§54-368

§54.1-3200

§54-369

§54.1-3201

§54-370

§54.1-3202

§54-371

§54.1-3207

§54-372

§54.1-3207

§54-373

§54.1-3208

§54-374

deleted

§54-375

deleted

§54-375.1

§54.1-3207

§54-376

repealed

§54-377

deleted

§54-377.1

§54.1-3209

§54-378

deleted

§54-379

§54.1-3210

§54-380

repealed

§54-381

§54.1-3211

§54-382

§54.1-3211

§54-383

§54.1-3211

§54-384

§54.1-3212

§54-385

§54.1-3212

§54-386

§54.1-3213

§54-386.1

§54.1-3214

§54-386.2

repealed

§54-387

§54.1-3203

§54-388

§54.1-3220

§54-388.1

§54.1-3221

§54-389

repealed

§54-390

§54.1-3205

§54-391

§54.1-3215

§54-392

§54.1-3216

§54-393

§54.1-3217

§54-394

repealed

§54-394.1

§54.1-3218

§54-395

repealed

§54-396

§54.1-3213

§54-397

§54.1-3213

§54-397.1

§54.1-3219

§54-398

deleted

§54-398.01

§54.1-3204

§54-398.02

deleted

§54.1-3205

deleted

deleted

§54.1-3206

COMPARATIVE TABLES
(Opticians)

OLD TITLE 54

NEW TITLE 54.1

Chapter 14.1

Chapter 17

§ 54-398.1
54-398.2
54-398.3

54-398.4
54-398.4:1
54-398.5
54-398.6
54-398.7
54-398.8
54-398.9
54-398.10
54-398.11 through 54-398.26
354-398.27
54-398.28

§ 54.1-1701
54.1-1700
54.1-1701
54.1-1704
Repealed
54.1-1702
54.1-1703
Repealed
Repealed
Repealed
Deleted
54.1-1702
Repealed
54.1-1705
Repealed

COMPARATIVE TABLES
(PHARMACY AND THE DRUG CONTROL ACT)

OLD TITLE 54

Chapter 15.1

§54-524.1
§54-524.2

§54-524.3
§54-524.4
§54-524.5
§54-524.6
§54-524.7
§54-524.8
§54-524.9
§54-524.10
§54-524.11
§54-524.12
§54-524.13
§54-524.14
§54-524.15
§54-524.16
§54-524.17
§54-524.18
§54-524.19
§54-524.20
§54-524.21
§54-524.22
§54-524.22:1
§54-524.22:2
§54-524.23
§54-524.24
§54-524.25
§54-524.26
§54-524.27
§54-524.28
§54-524.29
§54-524.30
§54-524.31
§54-524.32
§54-524.33
§54-524.34
§54-524.34:1
§54-524.35
§54-524.36

NEW TITLE 54.1

Chapters 33 and 34

§54.1-3400
§54.1-3300
§54.1-3401
deleted
§54.1-3403
§54.1-3305
§54.1-3305
§54.1-3306
deleted
deleted
deleted
§54.1-3305
deleted
§54.1-3305
deleted
deleted
§54.1-3307
deleted
§54.1-3307
§54.1-3308
repealed
§54.1-3312
repealed
§54.1-3316
§54.1-3317
§54.1-3311
deleted
§54.1-3311
§54.1-3313
deleted
§54.1-3318
deleted
§54.1-3314
§54.1-3434
deleted
deleted
repealed
§54.1-3304
§54.1-3315
§54.1-3437

COMPARATIVE TABLES
(DRUG CONTROL ACT -- CON.)

§54-524.37	§54.1-3438
§54-524.38	§54.1-3430
§54-524.39	§54.1-3430
§54-524.40	§54.1-3439
§54-524.41	§54.1-3440
§54-524.41:1	§54.1-3441
§54-524.41:2	§54.1-3442
§54-524.42	repealed
§54-524.43	repealed
§54-524.44	§54.1-3435
§54-524.45	§54.1-3436
§54-524.46	§54.1-3429
§54-524.47	§54.1-3402
§54-524.47:1	§54.1-3425
§54-524.47:2	§54.1-3422
§54-524.47:3	§54.1-3423
§54-524.47:4	§54.1-3424
§54-524.48	§54.1-3310
§54-524.49	§54.1-3433
§54-524.50	repealed
§54-524.50:1	§54.1-3303
§54-524.51	§54.1-3432
§54-524.52	repealed
§54-524.53	§54.1-3301
	§54.1-3302
§54-524.54	§54.1-3301
§54-524.55	repealed
§54-524.56	§54.1-3404
§54-524.57	§54.1-3405
§54-524.58	§54.1-3406
§54-524.58:1	§54.1-3413
§54-524.58:2	§54.1-3420
§54-524.59	§54.1-3415
§54-524.59:1	§54.1-3407
§54-524.60	§54.1-3414
§54-524.61	§54.1-3417
§54-524.62	§54.1-3418
§54-524.63	repealed
§54-524.64	repealed
§54-524.65	§54.1-3408
§54-524.66	§54.1-3409
§54-524.67	§54.1-3410
§54-524.67:1	§54.1-3426
§54-524.67:2	§54.1-3427
§54-524.67:3	§54.1-3419
§54-524.68	§54.1-3411
§54-524.69	§54.1-3412
§54-524.70 through §54-524.74	repealed
§54-524.75	§54.1-3416
§54-524.76	repealed
§54-524.77	repealed
§54-524.77:1	§54.1-3431
§54-524.78	repealed

COMPARATIVE TABLES
(DRUG CONTROL ACT -- CON.)

§54-524.79 through §54-524.84	repealed
§54-524.84:1	§54.1-3443
§54-524.84:2	§54.1-3444
§54-524.84:3	§54.1-3445
§54-524.84:4	§54.1-3446
§54-524.84:5	§54.1-3447
§54-524.84:6	§54.1-3448
§54-524.84:7	§54.1-3449
§54-524.84:8	§54.1-3450
§54-524.84:9	§54.1-3451
§54-524.84:10	§54.1-3452
§54-524.84:11	§54.1-3453
§54-524.84:12	§54.1-3454
§54-524.84:13	§54.1-3455
§54-524.84:14	§54.1-3456
§54-524.85	§54.1-3457
§54-524.86	deleted
§54-524.87	§54.1-3458
§54-524.88	§54.1-3459
§54-524.89	deleted
§54-524.90	repealed
§54-524.91	§54.1-3460
§54-524.92	§54.1-3461
§54-524.93	§54.1-3462
§54-524.94	§54.1-3463
§54-524.95	§54.1-3421
§54-524.96	§54.1-3464
§54-524.97	§54.1-3465
§54-524.98	deleted
§54-524.99	§54.1-3309
§54-524.100	§54.1-3428
§54-524.101	repealed
§54-524.101:1 - §54-524.108	repealed
§54-524.109	not set out
§54-524.109:1	§54.1-3466
§54-524.109:2	§54.1-3467
§54-524.109:3	§54.1-3468
§54-524.109:4	§54.1-3469
§54-524.109:5	§54.1-3470
§54-524.109:6	deleted
§54-524.109:7	§54.1-3471
§54-524.109:8	§54.1-3472

COMPARATIVE TABLES
(Hearing Aid Specialists)

OLD TITLE 54

Chapter 15.2

§ 54-524.110
54-524.111

54-524.112
54-524.113
54-524.114
54-524.115
54-524.116
54-524.117 through 54-524.119

NEW TITLE 54.1

Chapter 15

§ 54.1-1500
54.1-1501
54.1-1504
54.1-1501
54.1-1502
54.1-1503
Repealed
54.1-1502
Repealed

COMPARATIVE TABLES
(Branch Pilots)

OLD TITLE 54

NEW TITLE 54.1

Chapter 16

Chapter 9

§ 54-525	§ 54.1-900
54-526	Repealed
54-527	54.1-901
54-528	54.1-901
54-529	54.1-902
54-530	54.1-901
54-531	54.1-901
54-532	Deleted
54-533	54.1-903
54-534	54.1-903
54-535	54.1-904
54-536	54.1-905
54-537	54.1-906
54-538	54.1-906
54-539	54.1-907
54-540	54.1-907
54-541	54.1-908
54-542	54.1-909
54-543	54.1-909
54-544	54.1-910
54-545	Repealed
54-546	Deleted
54-547	54.1-911
54-548	54.1-912
54-549	54.1-913
54-550	54.1-914
54-551	Deleted
54-552	Deleted
54-553	Deleted
54-554	54.1-915
54-555	54.1-905
54-556	54.1-909
54-557	Deleted
54-558	54.1-916
54-559	Deleted
54-560	Deleted
54-561	54.1-917
54-562	54.1-918
54-563	54.1-919
54-564	54.1-920
54-565	54.1-921
54-566	54.1-922
54-567	Deleted
54-568	Deleted
54-569	54.1-923
54-570	Deleted
54-571	54.1-924
54-572	54.1-925
54-573	54.1-926

COMPARATIVE TABLES
(Private Security Services Businesses)

OLD TITLE 54

NEW TITLE 54.1

Chapter 17.3

Chapter 19

§ 54-729.27
54-729.28
54-729.29
54-729.30

54-729.31
54-729.32
54-729.33
54-729.34

§ 54.1-1900
54.1-1901
54.1-1902
54.1-1903
54.1-1904
54.1-1905
54.1-1906
54.1-1907
54.1-1908

Comparative Tables
(Real Estate Brokers, Sales Persons
and Rental Location Agents)

OLD TITLE 54

NEW TITLE 54.1

Chapter 18

Chapter 21

§ 54-730	§ 54.1-2100
54-731	54.1-2101
54-731.1	54.1-2102
54-731.2	Repealed
54-731.3	54.1-2109
54-732	54.1-2107
54-733	54.1-2110
54-734	54.1-2103
54-735	Repealed
54-736	Repealed
54-737	54.1-2104
54-738	54.1-2104
54-739	54.1-2104
54-740	54.1-2105
54-741	Repealed
54-742	Repealed
54-743	Repealed
54-744	54.1-2104
54-745	Deleted
54-746	Deleted
54-747	Repealed
54-748	Repealed
54-749	54.1-2106
54-750 through 54-764.4	Repealed
54-764.5	54.1-2108
54-765	Repealed
54-765.1	Deleted
54-765.2	54.1-2112
54-765.3	54.1-2113
54-765.4	54.1-2114
54-765.4:1	54.1-2115
54-765.5	54.1-2116
54-765.6	54.1-2117
54-765.7	54.1-2118
54-765.8	54.1-2119
54-765.9	54.1-2120
54-766	Deleted
54-770 through 54-772	Repealed
54-773	54.1-2111
54-774	54.1-2111
54-775	Repealed

COMPARATIVE TABLES
(VETERINARY MEDICINE)

OLD TITLE 54

Chapter 19

§54-776
§54-777
§54-777.1
§54-778
§54-779
§54-780
§54-781
§54-782
§54-783
§54-784
§54-784.01
§54-784.02
§54-784.03
§54-784.04
§54-784.1
§54-785
§54-786

§54-786.1
§54-786.2
§54-786.3
§54-786.4
§54-786.5
§54-786.6
§54-786.7
§54-786.8
§54-787
§54-788
§54-788.1 through §54-791

NEW TITLE 54.1

Chapter 38

§54.1-3802
§54.1-3802
§54.1-3803
repealed
deleted
deleted
deleted
deleted
§54.1-3802
§54.1-3802
repealed
deleted
§54.1-3804
deleted
repealed
repealed
§54.1-3800
§54.1-3801
repealed
§54.1-3805
§54.1-3806
§54.1-3807
§54.1-3808
§54.1-3809
deleted
§54.1-3810
repealed
repealed
repealed

Comparative Tables
(Auctioneers)

OLD TITLE 54

NEW TITLE 54.1

Chapter 20.1

Chapter 6

§ 54-824.1
54-824.2
54-824.3
54-824.4
54-824.5
54-824.6
54-824.7
54-824.8
54-824.9
54-824.9:1
54-824.9:2
54-824.9:3
54-824.10
54-824.11
54-824.12
54-824.13
54-824.14
54-824.15
54-824.16
54-824.17
54-824.18
54-824.19
54-824.20
54-824.21

Deleted
§ 54.1-600
54.1-601
54.1-602
Repealed
Repealed
54.1-602
Repealed
Repealed
54.1-603
54.1-604
54.1-602
Repealed
Repealed
Repealed
Repealed
Repealed
54.1-605
Repealed
54.1-604
Repealed
54.1-606
Repealed
Deleted

COMPARATIVE TABLES
(Junk Dealers)

OLD TITLE 54

Chapter 21

§ 54-825 through 54-835
54-836

Deleted
Repealed

COMPARATIVE TABLES
(Pawnbrokers)

OLD TITLE 54

NEW TITLE 54.1

Chapter 23

§ 54-840
54-841
54-842
54-843
54-844
54-845
54-846
54-847
54-848
54-849
54-850
54-851
54-852
54-853
54-854
54-855
54-856
54-857
54-858
54-859

Chapter 40

§ 54.1-4000
54.1-4001
54.1-4001
54.1-4002
Repealed
54.1-4003
54.1-4004
54.1-4005
54.1-4006
54.1-4007
54.1-4008
54.1-4009
54.1-4011
54.1-4010
54.1-4011
54.1-4012
54.1-4013
54.1-4014
54.1-4014
Deleted

COMPARATIVE TABLES
(Precious Metals Dealers)

OLD TITLE 54

Chapter 23.2

§ 54-859.15
54-859.16
54-859.17
54-859.18
54-859.19
54-859.20
54-859.21
54-859.22
54-859.23
54-859.24
54-859.25
54-859.26
54-859.27
54-859.28

NEW TITLE 54.1

Chapter 41

§ 54.1-4100
54.1-4101
54.1-4102
54.1-4103
54.1-4104
54.1-4105
54.1-4106
54.1-4107
54.1-4108
54.1-4109
54.1-4110
54.1-4111
54.1-4109
54.1-4109

Comparative Tables
(Employment Agencies)

OLD TITLE 54

NEW TITLE 54.1

Chapter 24.2

Chapter 13

§ 54-872.16

§ 54.1-1300

54-872.17

54.1-1301

54-872.18

54.1-1303

54-872.19

54.1-1302

54-872.20

54.1-1305

54-872.21

54.1-1304

54-872.22

54.1-1306

54-872.23

54.1-1307

54-872.23:1

Repealed

54-872.24

54.1-1302

54-872.25

54.1-1308

54-872.26

Deleted

Deleted

COMPARATIVE TABLES
(Professional Associations)

OLD TITLE 54

Chapter 25

§§ 54-873 through 54-898

Deleted

COMPARATIVE TABLES
(NURSING HOME ADMINISTRATORS)

OLD TITLE 54

NEW TITLE 54.1

Chapter 26

Chapter 31

§54-899	deleted
§54-900	§54.1-3100
§54-901	§54.1-3103
§54-901.1	§54.1-3102
§54-902	repealed
§54-903	§54.1-3101
§54-903.1	§54.1-3101
§54-904	repealed
§54-905	repealed
§54-906.1	repealed
§54-907	§54.1-3101
§54-908 through §54-915	repealed

COMPARATIVE TABLES
(Polygraph Examiners)

OLD TITLE 54

Chapter 27

§ 54-916
54-917
54-918
54-919
54-920
54-921
54-922

NEW TITLE 54.1

Chapter 18

§ 54.1-1800
54.1-1802
54.1-1801
Deleted
54.1-1803
54.1-1804
54.1-1805

COMPARATIVE TABLES
(PROFESSIONAL COUNSELORS, PSYCHOLOGY, SOCIAL WORK)

OLD TITLE 54

NEW TITLE 54.1

Chapter 28

Chapters 35, 36 and 37

§54-923	deleted
§54-924	§54.1-3500
§54-925 through §54-927	repealed
§54-928	deleted
§54-929	§54.1-3505
	§54.1-3605
	§54.1-3705
§54-930	repealed
§54-931	§54.1-3505
	§54.1-3605
	§54.1-3705
§54-932	§54.1-3500
§54-933	§54.1-3503
§54-933.1	deleted
§54-933.2	§54.1-3504
§54-934	repealed
§54-934.1	repealed
§54-935	deleted
§54-935.1	§54.1-3506
§54-936	§54.1-3600
§54-937	§54.1-3603
§54-937.1	§54.1-3604
§54-938	§54.1-3607
§54-939	§54.1-3608
§54-939.1	§54.1-3606
§54-940	reserved
§54-941	§54.1-3700
§54-942	§54.1-3703
§54-942.1	§54.1-3704
§54-943	§54.1-3707
§54-943.1	§54.1-3706
§54-944	§54.1-3501
	§54.1-3601
	§54.1-3701
§54-945	§54.1-3502
	§54.1-3602
	§54.1-3702
§54-946	deleted
§54-947	reserved
§54-948	repealed

COMPARATIVE TABLES
(GENERAL PROVISIONS FOR THE
HEALTH REGULATORY BOARDS--SUBTITLE III)
(THE DEPARTMENT OF HEALTH PROFESSIONS)

OLD TITLE 54

Chapter 29

§54-949
§54-950
§54-950.1
§54-950.2
§54-950.2:1
§54-950.3
§54-951
§54-952
§54-953
§54-954
§54-954.1
§54-955
§54-955.1
§54-956
§54-957
§54-958
§54-959
§54-959.1
§54-960
§54-960.1
§54-961

NEW TITLE 54.1

Chapters 24 and 25

deleted
§54.1-2500
§54.1-2501
§54.1-2503
deleted
§54.1-2402
§54.1-2507
repealed
§54.1-2508
§54.1-2509
§54.1-2504
§54.1-2505
§54.1-2510
repealed
repealed
deleted
deleted
§54.1-2403
§54.1-2506
§54.1-2502
§54.1-2401

Comparative Tables
(Geologists)

OLD TITLE 54

NEW TITLE 54.1

Chapter 30

Chapter 14

§ 54-962
54-963
54-964
54-965
54-966
54-967
54-968

§ 54.1-1400
54.1-1402
54.1-1403
54.1-1403
54.1-1404
54.1-1405
54.1-1401

Comparative Tables
(Soil Scientists)

OLD TITLE 54

NEW TITLE 54.1

Chapter 31

Chapter 22

§ 54-969
54-970
54-971
54-972
54-973
54-974
54-975
54-976
54-977

§ 54.1-2200
54.1-2201
54.1-2208
54.1-2202
54.1-2203
54.1-2204
54.1-2205
54.1-2206
54.1-2207

Comparative Tables
(Boxing and Wrestling Matches)

TITLE 9

NEW TITLE 54.1

Chapter 4

Chapter 8

§ 9-16	§ 54.1-805
9-16.1	54.1-802
9-16.2	54.1-801
9-17	54.1-805
9-18	Repealed
9-19	54.1-805
9-20	Repealed
9-21	Repealed
9-22	54.1-806
9-23	54.1-809
9-24	54.1-813
9-25	54.1-810
9-26	Repealed
9-27	54.1-810
9-28	54.1-811
9-29	54.1-807
	54.1-814
9-29.1	54.1-815
9-30	54.1-816
9-31	Repealed
9-32	Repealed
9-33	54.1-822
9-34	54.1-808
9-35	54.1-819
9-36	Deleted
9-37	54.1-817
9-38	54.1-812
9-39	54.1-818
9-40	54.1-823
9-41	54.1-824
9-42	54.1-825
9-43	54.1-826
9-44	Deleted
9-44.1	Deleted
9-44.2	Deleted
9-45	54.1-820
9-45.1	54.1-821
9-46	54.1-805
9-46.1	54.1-800
9-47	54.1-803
9-48	54.1-804

Appendix III

As a result of the recodification of Title 54, the following sections in the Code of Virginia will be amended, added or repealed.

1. Sections 2.1-1.1, 2.1-1.3, 2.1-1.6, 2.1-1.7, 2.1-20.4, 2.1-51.15, 9-6.25:1, 9-6.25:2 and 9-6.25:3 will be amended to reflect the changes in the names of several of the Boards and the Department of Health Regulatory Boards.
2. Section 2.1-43 will be amended to provide that the Governor may remove board members from office due to absenteeism.
3. Section 6.1-330.76 will be amended to delete references to professional associations.
4. Section 9-6.14:4.1 of the Administrative Process Act (APA) will be amended to exempt from the APA the adjustment of fees of regulatory boards pursuant to proposed § 54.1-113.
5. Section 13.1-545 providing for the merger of professional associations into professional corporations by July 1, 1972, will be repealed.
6. Existing § 54-278.4 relating to weight loss centers or clinics will be relocated to Title 18.2 as § 18.2-502.1.
7. Sections 59.1-124, 59.1-127 and 59.1-130 will be amended to delete references to the chapter pertaining to dealers in junk and secondhand articles, which is being repealed.

**The effective date of the recodification will be January 1, 1989.

